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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Connect America Fund Phase II Auction	)	AU Docket No. 17-182
	)	
The Uniendo a Puerto Rico Fund and the Connect USVI Fund	)	WC Docket No. 18-143
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
	)	
Rural Digital Opportunity Fund Auction	)	AU Docket No. 20-34
	)	
Establishing a 5G Fund for Rural America	)	GN Docket No. 20-32
	)	
Letters of Credit for Recipients of High-Cost Competitive Bidding Support	)	WC Docket No. 24-144

REPORT AND ORDER AND ORDER

Adopted: December 11, 2024 **Released: December 13, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Report and Order and Order, we make targeted modifications to the requirements for letters of credit that recipients of Universal Service Fund (USF) high-cost support awarded through a competitive process must obtain. These changes are intended to facilitate accelerated broadband deployment in the areas where it is needed most, while continuing to safeguard our investment of limited USF dollars. First, we modify our bank eligibility rules for programs that award high-cost support through a competitive process, which will allow winning bidders to obtain qualifying letters from United States banks that meet the "well capitalized" criteria established by federal bank supervisory agencies. This change will increase the number of banks qualified to issue letters of credit compared to our prior standard, which required a B- or better Weiss safety rating, while also ensuring that we only accept letters of credit from financially stable banks. Second, we allow Rural Digital Opportunity Fund (RDOF) support recipients to reduce the value of their letters of credit to one year of their annual support if they have deployed service to 10% of their required locations by the end of their second year of support. Finally, we allow Connect America Fund Phase II (CAF II) support recipients that have met all of their reporting and deployment obligations to similarly reduce the value of their letters of credit consistent with the RDOF rules. Reducing the required letter of credit values for qualifying RDOF and CAF II support recipients will facilitate broadband deployment by reducing the amount of capital providers must maintain for the required letters of credit.

II. BACKGROUND

2. Since 2011, when it adopted rules for Phase I of the Mobility Fund, the Commission has required recipients of high-cost support authorized through a competitive process to obtain letters of

credit (LOCs).[1] This requirement served to "protect[ ] the integrity of the USF funds disbursed to the recipient," and to ensure that the Commission could recoup previously disbursed funds in the event of a support recipient's default.[2] These rules required that a support recipient maintain a higher value in the letter of credit instrument corresponding to the total amount of support it had received, plus an additional percentage.[3] The Commission also needed to establish standards to ensure the health of the financial institutions issuing those letters of credit, and it determined that for a United States bank to be eligible to issue an LOC to a recipient of Mobility Fund Phase I support, it needed to: (1) be among the 50 largest United States banks; (2) be insured by the Federal Deposit Insurance Corporation (FDIC); and (3) have a long-term unsecured credit rating issued by Standard & Poor's (or an equivalent rating from another nationally recognized credit rating agency) of A- or better.[4]

3. Although the Commission continued to require letters of credit in subsequent high-cost support programs, it modified those requirements to increase the number of banks qualified to issue LOCs, giving potential participants a wider range of banks to choose from. In 2014, for example, when the Commission adopted rules for the Rural Broadband Experiments, it maintained the LOC requirement but, to "enlarge the potential pool of eligible banks," it made two changes to its eligibility rules for United States banks.[5] First, it allowed the largest 100, instead of 50, United States banks to issue LOCs.[6] Second, it required United States banks to have a long-term unsecured credit rating issued by Standard & Poor's (or an equivalent rating from another nationally recognized credit rating agency) of BBB- or better.[7]

4. In 2016, the Commission adopted rules for a competitive bidding process to award support via a reverse auction for CAF II.[8] In order to encourage more providers, including smaller providers, to participate in the auction, the Commission again expanded the number of banks that would be eligible to issue LOCs to support recipients, and determined a United States bank would be eligible to issue letters of credit to CAF II support recipients, if it (1) was insured by the FDIC, and (2) had a bank safety rating from Weiss of B- or better.[9] The Commission adopted this requirement because it concluded that Weiss's ratings were independent and would provide an objective measurement to determine whether a bank was sufficiently secure for the Commission to rely on the LOCs the bank issued.[10] Additionally,

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[1] *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17810-12, paras. 443-51 (2011) *aff'd sub nom., In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

[2] *Id*. at 17810, para. 446.

[3] *Id.* at 17811, para. 447.

[4] 47 CFR §§ 54.1007(a)(1)(i)(A)-(C).

[5] *See Connect America Fund; ETC Annual Reports and Certification*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8790, para. 59 (2014).

[6] *Id.*

[7] *Id*.

[8] *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5989-99, paras. 119-40 (2016) (*CAF Phase II Auction Order*).

[9] *CAF Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127; 47 CFR §§ 54.315(c)(2)(i)(A)-(B). These same requirements were later adopted in 2019 for Stage 2 of the Uniendo a Puerto Rico Fund and the Connect USVI Fund. *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, Report and Order and Order on Reconsideration, 34 FCC Rcd 9109, 9151, para. 76 (2019); 47 CFR §§ 54.1508(c)(1)(i)-(ii). The Commission also allowed two institutions that are not FDIC-insured, CoBank and the National Rural Utilities Cooperative Finance Corporation, to issue program LOCs, as long as those institutions met certain requirements. *CAF Phase II Auction Order*, 31 FCC Rcd at 5994-96, paras. 128-130.

[10] *CAF Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127.

the Commission noted that adopting the Weiss ratings would increase the number of eligible banks from roughly 70 to over 3,600.[11] The Commission also required that an LOC for the CAF II auction be valued at the amount of total support that a recipient had received, in addition to the amount that was to be disbursed in the coming year.[12] CAF II support recipients were able to slightly reduce the value of their LOCs, to 90% of their previously received support, plus the amount they would receive in the next year, once they deployed service to 60% of their required locations. They were able to further reduce their LOCs to 80% of their previously received support, plus the amount they would receive in the next year, once they deployed service to 80% of their required locations.[13]

5. In 2020, the Commission adopted rules for the RDOF auction.[14] Like CAF II, the RDOF awarded high-cost support to carriers via a competitive bidding process. While the Commission retained the same eligibility rules for United States banks (i.e., requiring the bank to (1) be insured by the FDIC, and (2) have a bank safety rating from Weiss of B- or better),[15] it made several changes to the rules governing the letters of credit RDOF support recipients were required to obtain. Relevant here, RDOF support recipients were permitted to obtain LOCs at reduced amounts compared to the CAF II support recipients' LOCs,[16] and RDOF support recipients were also permitted to reduce the value of their LOC, and therefore the amount of recipient capital constrained by the LOC, to an amount equal to one year of their total support in a given area if they met a series of deployment milestones, beginning at the end of their third year of support.[17] RDOF support recipients were also given the opportunity to reduce the value of the LOC to one year of support if they deployed service to 20% of their required locations by the end of their second year of support.[18]

6. Later in 2020, the Commission established the 5G Fund for Rural America (5G Fund), which would use multi-round reverse auctions to distribute universal service support for high-speed, 5G mobile broadband services.[19] As in CAF II and RDOF, the Commission adopted LOC requirements, using the same criteria for determining whether a bank is "acceptable to the Commission" for purposes of its eligibility to offer an LOC to a support applicant.[20]

7. As the various Commission USF programs continued to support broadband deployment, the Commission needed to adjust the letter of credit requirements in response to market conditions related to the COVID-19 pandemic. In June 2020, the Wireline Competition Bureau (Bureau) issued a waiver allowing CAF II support recipients to follow the RDOF letter of credit rules pertaining to the required

[11] *Id.*

[12] *Id*. at 5997, para. 135.

[13] *Id.* at 5997-98, para. 136; 47 CFR §§ 54.315(c)(1)(i)-(ii).

[14] *See generally Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686 (2020) (*Rural Digital Opportunity Fund Order*).

[15] *Id.* at 732, para. 107; 47 CFR § 54.804(c)(2)(i)(B).

[16] *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 730, para. 101. *Compare* 47 CFR §§ 54.804(c)(1)(i)-(v) (setting forth the required value of RDOF LOCs) *with* 47 CFR § 54.315(c)(1) (setting forth the required value of Auction 903 LOCs).

[17] *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 709, para. 45.

[18] *Id.* 730, para. 99.

[19] *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Report and Order, 35 FCC Rcd 12174, 12263-69, paras. 225-44 (2020), modified by *Errata* released Nov. 10, 2020, Nov. 27, 2020, and Jan. 11, 2021 (*5G Fund Report and Order*); *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Second Report and Order. Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, FCC 24-89 (Aug. 29, 2024).

[20] 47 CFR § 54.1016(a)(2)(i).

value of LOCs until December 31, 2021.[21] This waiver was later renewed for all CAF II support recipients until December 31, 2022[22] and, in 2022, extended another year but was limited to CAF II support recipients that had met each of their deployment and reporting deadlines.[23] In 2023, that limited waiver was extended until December 31, 2024.[24]

8. Over the past several years, while carriers have been deploying broadband through CAF II and RDOF, numerous banks that had issued LOCs had their Weiss safety rating fall below a B-, which made those banks ineligible to issue LOCs for those programs. When the Commission first adopted the B- or better Weiss safety rating threshold for banks issuing LOCs, nearly 3,600 banks had a safety rating of B- or better. That number had fallen to 1,851 in March 2024,[25] and as of the middle of November 2024, that number is now 1,634.[26] Numerous providers have requested waivers to retain the letter of credit with their current bank, citing to concerns about the costs and administrative burdens associated with obtaining a new letter of credit. The Bureau granted those waivers to spare support recipients of the additional time and expense of obtaining letters of credit from different banks with Weiss safety ratings above a B-.[27] Next, to avoid needing to address individual waiver requests on an ongoing basis, the Bureau earlier this year issued a temporary waiver for all CAF II and RDOF participants of the requirement that United States banks issuing program LOCs maintain a Weiss safety rating of B- or better. This waiver was limited to banks that previously issued program LOCs and then saw their Weiss safety ratings fall below a B-.[28]

9. After the Bureau's waiver order was released, we adopted in June 2024 a Notice of Proposed Rulemaking proposing measures to adjust the Commission's letter of credit requirements by securing the financial commitments made in CAF II and RDOF, as well as any 5G Fund auction, while maintaining a sufficiently expansive pool of issuing banks to enable broad participation in the programs.[29] To accomplish these dual goals, we sought comment on potential alternatives to the Weiss ratings that could be used to evaluate a bank's fitness to issue LOCs,[30] and, alternatively, on lowering the Weiss safety rating threshold that would allow a bank to issue LOCs.[31] We also sought comment on allowing RDOF support recipients to lower the value of their LOCs to one year of their total support if they deployed service to 10% of their required locations within a state by the end of their second year of

[21] *Connect America Fund*; *ETC Annual Reports and Certification; Rural Broadband Experiments; Connect America Fund Phase II Auction*, WC Docket Nos. 10-90, 14-58, 14-259; AU Docket No. 17-182, Order, 35 FCC Rcd 6556 (WCB 2020).

[22] *Connect America Fund, et al.*, Order, 36 FCC Rcd 16633 (WCB 2021) (*2021 Letter of Credit Waiver Extension*).

[23] *Connect America Fund, et al.*, Order, 37 FCC Rcd 14592, 14592, para. 1 (WCB 2022) (*2022 Letter of Credit Waiver Extension Order*).

[24] *Connect America Fund, et al.*, Order, 38 FCC Rcd 11158, 11158, para. 1 (WCB 2023) (*2023 Letter of Credit Waiver Extension Order*).

[25] *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 39 FCC Rcd 2308, 2310, para. 6 & n.17 (WCB 2024) (*Weiss Waiver Order*).

[26] *See* Weiss Bank Safety Ratings, https://weissratings.com/en/banking (last visited Nov. 18, 2024).

[27] *See Weiss Waiver Order*, 39 FCC Rcd at 2309, para. 3 & n. 7 (listing the individual Bureau-level waivers).

[28] *Id*. at 2308, para. 1.

[29] *See Connect America Fund et al.,* WC Docket Nos. 10-90 et al., Notice of Proposed Rulemaking, FCC 24-64, at 6-7, para. 16 (June 7, 2024) (*Letter of Credit NPRM*).

[30] *Id.* at 7-8, para. 18.

[31] *Id.* at 8-9, para. 21.

support.[32] Finally, we sought comment on extending the waiver allowing CAF II recipients that have met all of their deployment and reporting obligations to follow the RDOF LOC rules.[33]

III. DISCUSSION

10. The record provides broad support for the Commission to use a standard other than a Weiss B- safety rating for banks to qualify to issue letters of credit. The record also broadly supports reducing the required letter of credit values to one year of support for (1) RDOF providers that have deployed service to 10% of their required locations within a state by the end of their second year of support and (2) CAF II support recipients that have met all of their reporting and deployment obligations.

A. "Well Capitalized" Criteria for Issuing Letters of Credit

11. We first find the Commission's relevant high-cost programs should continue to use a reliable benchmark to assess an issuing bank's financial stability. As a threshold matter, several commenters argued that no evaluation of a bank's reliability is necessary, and that any federally insured bank should be eligible to issue program LOCs.[34] We disagree. As the Commission explained in 2016, allowing any federally-insured bank to issue program LOCs would require Commission staff to "conduct a comprehensive review of every bank to determine whether it has adequate safety and soundness."[35] We continue to believe that some assurance of a bank's stability beyond being federally-insured is necessary, and that this assurance will enhance the reliability of the LOCs that are issued, and, by extension, the integrity of our programs that rely on those LOCs.

12. We next decide the appropriate standard to ensure a bank's financial health. Commenters disagreed about whether we should continue to use the Weiss ratings,[36] with some arguing that the Weiss ratings were opaque and fundamentally unreliable, while others believe the Commission should continue to use the Weiss ratings to minimize disruption.[37] Commenters also had a number of different proposals for alternative methods of evaluating a bank's suitability to issue program LOCs. The Bank Policy Institute argued that if the Commission sought to evaluate a bank's suitability to issue program LOCs, it should require the bank to be "well capitalized," which is "the federal supervisory framework's highest tier of capitalization."[38] Other commenters suggested that a bank should only need to be "adequately capitalized," a less stringent standard than "well capitalized."[39] Bank of America suggested that a United States bank should be allowed to issue program LOCs if it had either: (1) a Weiss rating of B- or higher, or (2) a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's.[40]

13. Based on our review of the record, we eliminate the use of the Weiss ratings as the standard for United States banks to be considered "acceptable to the Commission" for purposes of issuing

[32] *Id.* at 9-10, paras. 22-24.

[33] *Id.* at 10, para. 25.

[34] *See, e.g.*, State Banking Associations Comments at 3.

[35] *See CAF Phase II Auction Order*, 31 FCC Rcd at 5996, para. 132.

[36] *Compare* ACA Connects Reply Comments at 1-2 (stating that "As an initial matter, we are not persuaded by comments criticizing reliance on Weiss ratings in general to determine bank eligibility to issue LOCs") *with* WISPA Comments at 2-4 (arguing that the Commission should no longer use Weiss ratings).

[37] *See* US Telecom Comments at 3 (advocating for different standards, but suggesting that the Commission could continue to use Weiss ratings to minimize disruption).

[38] BPI Comments at 3.

[39] *See, e.g.*, Independent Community Bankers of America Comments at 3-4.

[40] *See* Letter from James Carlisle, Senior Vice President, Federal Government Relations, Bank of America, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (filed Dec. 8, 2023) (*BOA Ex Parte*).

qualifying program LOCs. We modify our rules to make a bank "acceptable to the Commission" if it is a United States bank insured by the Federal Deposit Insurance Corporation (FDIC) that meets the criteria to be considered "well capitalized" as determined by the FDIC, the Federal Reserve, and the Office of the Comptroller of the Currency (OCC).[41] Applying the well capitalized criteria used by these agencies will provide the Commission with assurance that the United States banks issuing program LOCs will have sufficient capital to promptly honor those LOCs in the event that the Commission needs to recover payment due to a default.

14. Federal bank regulators are required by statute to promulgate regulations ensuring that a bank maintains adequate capital.[42] The financial condition of United States banks is supervised by one of three agencies: the FDIC, the Federal Reserve, and the OCC.[43] Each agency has promulgated nearly-identical criteria to determine a bank's capitalization status and whether it is "well capitalized."[44] Based on the four publicly-available metrics used by these agencies,[45] a bank's capitalization status can be well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized. For a bank to be well capitalized, the regulations also require a confirmation from the bank that it is not subject to certain regulatory actions from its supervising agency.[46]

15. We find that these established criteria are appropriate metrics by which we can determine that a banking institution is financially stable and has sufficient assets relative to its liabilities. Furthermore, like the Weiss bank safety ratings, the metrics that determine whether a bank is well capitalized are accessible—in this case in the electronic Code of Federal Regulations,[47] and a bank's well capitalized status is not confidential supervisory information and is publicly available,[48] which will assist both the Commission and the Universal Service Administrative Company (USAC or the Administrator) in determining whether a support recipient's letter of credit complies with program rules. Relying on these criteria will promote transparency in how banks may qualify to issue LOCs for Commission high-cost support programs because the standards for the metrics are established by regulation. Further, as stewards of the USF, we have a responsibility to ensure that our programs' expenditures are protected while minimizing disruption for support recipients and their banks, and we conclude that using these criteria will achieve our obligations.

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[41] This change will apply to all of our existing high-cost programs that award support through a competitive process. *See* App'x A (revising 47 CFR §§ 54.315(c)(2)(i)(B) (Auction 903 (CAF II)); 54.804(c)(2)(i)(B) (Auction 904 (RDOF)); 54.1016(a)(2)(i)(B) (5G Fund); 54.1508(c)(1)(ii) (Stage 2 fixed support for the Uniendo a Puerto Rico Fund and the Connect USVI Fund)).

[42] 12 U.S.C. § 3907(a)(1).

[43] *See* Congressional Research Service, Bank Capital Requirements: A Primer and Policy Issues at 6 (Mar. 9, 2023), *available at* https://crsreports.congress.gov/product/pdf/R/R47447 (explaining that "[t]he OCC is the primary federal regulator for nationally chartered banks, the Fed[eral Reserve] for state-chartered banks that become members of the Federal Reserve System, and the FDIC for the remaining state-chartered banks").

[44] 12 CFR §§ 6.4 (b)(1)(i)(A)-(E); 12 CFR §§ 208.43 b)(1)(i)(A)-(E); 12 CFR §§ 324.403(b)(1)(i)(A)-(E).

[45] 12 CFR §§ 324.403(b)(1)(i)(A)-(D) (setting forth the required ratios for a bank's Total Risk-Based Capital Measure, Tier 1 Risk-Based Capital Measure, Common Equity Tier-1 Capital Measure, and Leverage Ratio). These metrics are available on the FDIC's website for every bank the FDIC insures. Since, with the exception of CoBank and the National Rural Utilities Cooperative Finance Corporation, United States banks must be insured by the FDIC to issue program LOCs, *see* 47 CFR §§ 54.315(c)(2)(ii)-(iii); 54.315(c)(2)(i)(A), this means that the relevant metrics will be publicly available for all eligible banks. (The cited rule applies to Auction 903 support recipients. The other high-cost programs that award support through a competitive process have identical rules.)

[46] *See, e.g.*, 12 CFR § 324.403(b)(1)(i)(E).

[47] https://www.ecfr.gov/.

[48] *See* BPI Comments at 4. All banks that are insured by the FDIC have their relevant financial information publicly available on the FDIC website. *See* https://banks.data.fdic.gov/bankfind-suite/bankfind.

16. As an additional safeguard, when future LOCs are submitted by program recipients to demonstrate compliance with the Commission's rules, we will also require a certification from a United States bank's officer that the bank meets the criteria to be considered well capitalized by at least one of the FDIC, the Federal Reserve, or the OCC.[49] We direct the Administrator to confirm the bank's status as well capitalized based on the four publicly-available metrics. The certification from a United States bank's officer will also serve as confirmation that the bank is not subject to any of the enhanced regulatory scrutiny set forth in the banking agencies' rules that would remove a bank from well capitalized status.

17. Numerous commenters supported the Commission using well capitalized as the appropriate standard.[50] We disagree with the commenters who argued that banks that are merely "adequately capitalized" under the financial regulations should also be allowed to issue program LOCs.[51] We conclude that allowing only banks that are well capitalized, which is the highest tier of capitalization among the banks that are federally supervised, will provide an appropriate level of assurance that the LOCs that are issued can be relied upon, if needed.[52] Although there are no regulatory penalties associated with being adequately capitalized instead of well capitalized, banks that are adequately capitalized but not well capitalized are subject to additional requirements, such as more frequent examinations,[53] and a bank would need to exceed the well capitalized standard to avoid certain capital restrictions.[54] To avoid any marginal risk associated with institutions that do not meet the well capitalized standard, and because the vast majority of United States banks are well capitalized, we believe that requiring this highest tier of capitalization best balances our need for assurances of a bank's financial stability while allowing a large number of banks to issue program LOCs.

18. We disagree with commenters who contend that we should continue to use the Weiss ratings.[55] We believe, based on our experience and the record before us, that the use of the Weiss bank safety ratings has ultimately burdened RDOF and CAF II recipients and their banks, and the significant number of banks whose Weiss safety rating has fallen below a B- has forced numerous recipients to incur additional time and expense to obtain LOCs from different banks or to obtain a waiver of our rules.[56] Since there are more banks that are well capitalized—a criteria that also provides us an appropriate level of assurance regarding the bank's financial stability—than there are banks that have a Weiss bank safety rating of B- or better, modifying our bank qualification standard will allow for more flexibility for program support recipients to obtain and maintain LOCs from the bank of their choice without sacrificing

[49] This certification will become necessary after the rule changes in this Order take effect, which will be six months after this Order's adoption.

[50] *See, e.g.*, BPI Comments at 3-4.

[51] *See, e.g.*, Wisconsin Bankers Association Comments at 4; Independent Community Bankers Association Comments at 3-4.

[52] We note that the Commission previously declined to evaluate U.S. banks based solely on their capitalization status, because it concluded that using "a rating based on a number of financial indices provides a more comprehensive view of a bank's financial viability." *See CAF Phase II Auction Order*, 31 FCC Rcd at 5196-97, para. 132. However, our review of the record in this proceeding has convinced us that focusing solely on a bank's capitalization will provide certainty for providers and their banks while insuring that the LOCs that are issued can be relied upon.

[53] *Compare* 12 U.S.C. § 1820(d)(1) (generally requiring a full-scope, on-site examination of a bank every 12 months) *with* 12 U.S.C. § 1820(d)(4) (permitting certain banks that meet the capital requirements to be considered well capitalized to be examined every 18 months).

[54] *See* 12 CFR § 324.11(a)(4) (requiring banks to hold a capital conservation buffer above the risk-weighted capital requirements to avoid certain restrictions on capital distributions).

[55] *See, e.g.*, Weiss Comments.

[56] *See Weiss Waiver Order*, 34 FCC Rcd at 2309, para. 3.

program integrity. There appear to be more than 4,000 banks that are "well capitalized" under the federal rules, which makes it unlikely that our rule change would lead to disruption for program support recipients, as we expect that any bank that has a Weiss bank safety rating of B- or better will also be well capitalized.[57]

19. Nor do we find it reasonable or necessary to permit reliance on banks with Weiss safety ratings of C- or better, as some commenters suggested.[58] While lowering the permissible minimum rating from B- to C- would likely allow more United States banks to issue program LOCs,[59] we believe that such a change is rendered unnecessary given our adoption of the well capitalized criteria, which, as explained above, allows more banks to qualify to issue LOCs than the current Weiss B- rating threshold. Accordingly, we decline to continue to use the Weiss bank safety ratings at any level.

20. Finally, we decline to adopt the alternative methods of evaluating a bank's reliability that were proposed in the record.[60] We note that adopting Bank of America's proposal of allowing United States banks with a "long-term unsecured credit rating issued by a widely [] recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's"[61] would leave many smaller banks ineligible to issue program LOCs, as many of these smaller institutions are not rated by large Nationally Recognized Statistical Rating Organizations (NRSROs).[62] Preventing smaller banks from issuing program LOCs would run counter to the Commission's original goal of "expand[ing] the eligibility of banks to lower barriers to participation in the auction for entities that may not otherwise be able to obtain a letter of credit from a smaller pool of banks."[63] Instead, allowing United States banks that are "well capitalized" to issue program LOCs will best benefit program recipients by allowing them to obtain and maintain LOCs from a larger pool of United States banks while still serving the LOC requirement's purpose of supporting program integrity by enabling the Commission to recover funding if needed.

21. *Transition Period*. We will provide a transition period of six months from the effective date of this Order, during which providers may continue to obtain and maintain program LOCs and rely upon the existing waiver of our rule requiring a Weiss bank safety rating of B- or better.[64] To enable this transition, on our own motion, we extend the Bureau's waiver of the rules requiring a Weiss bank safety rating of B- or better for those banks that previously qualified to issue letters of credit to support recipients until the end of this transition period. Without a waiver extension, impacted support recipients would be required to obtain new letters of credit under the existing rules even though a new standard will

[57] *See, e.g.,* WISPA Comments at 7 (stating that they believe that there are over 4,350 banks that are well capitalized); BPI Comments at 3-4 & n.13 (stating that 4,561 banks met the required capital ratios to be well capitalized, but acknowledging that this number did not account for banks that could be subject to enhanced regulatory supervision).

[58] *See, e.g.* ACA Comments at 2-3.

[59] *See* Weiss Bank Safety Ratings, https://weissratings.com/en/banking (last visited Nov 18, 2024) (as of November 18, out of 4,487 banks rated by Weiss, 1,634 had a rating of B- or higher, while an additional 2,256 banks had ratings in the "C" tier, meaning that as of that date, 3,890 banks would be eligible to issue program LOCs if the standard were lowered to a C-).

[60] We also decline to adopt the ratings of KBRA Analytics as a replacement for the Weiss bank safety ratings, because we do not have sufficient data to assume the reliability and accuracy of those ratings. *See* KBRA Reply at 1.

[61] *BOA Ex Parte* at 2.

[62] Wisconsin Bankers Association Comments at 2.

[63] *CAF Phase II Auction Order*, 31 FCC Rcd at 5993-94, para. 127.

[64] *See Weiss Waiver Order* at 2310-11, para. 9 (waiving our rule requiring a Weiss bank safety rating of B- or better as long as the bank had a rating of B- or better when it first issued the program LOC).

soon be in place. Generally, the Commission's rules may be waived for good cause shown.[65] Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.[66] We believe that both circumstances are present here, because permitting the existing waiver to lapse prior to the effective date of the amended rules would require support recipients to incur significant costs and administrative burdens to obtain new letters of credit, even though their existing letters of credit may well meet the well capitalized standard that will soon be in effect. A waiver will serve the public interest by minimizing burdens on support recipients and permitting them to focus on ensuring that they are prepared to comply with the amended rules by the end of the transition period.

22. Additionally, support recipients whose letter of credit comes from a bank that no longer meets the Commission's criteria as of the effective date of this Order's adoption can continue to rely on the existing letter of credit until such letter of credit expires. Put differently, if the support recipient's LOC is from an ineligible bank, based on the rule we adopt herein, we will nonetheless consider the LOC compliant until it expires and is up for renewal. Additionally, banks will not need to certify that they are well capitalized until the rules we adopt today become effective.

B. RDOF Letter of Credit Reduction

23. In the *Letter of Credit NPRM*, we sought comment on allowing an RDOF recipient to lower the value of its LOC when it deployed service to 10%, rather than 20%, of its required locations by the end of its second year of support.[67] After considering the record, and the advantages of this proposal, we adopt this rule change.

24. Commenters almost universally supported this change and argued that allowing an RDOF support recipient to reduce the value of its LOC to one year of support after deploying service to 10% of required locations by the end of its second year of support would free up capital to facilitate more broadband deployment, while still requiring proof of substantial network construction.[68] The Coalition of RDOF Winners supported allowing an LOC's value to be reduced if a support recipient had deployed service to 10% of locations by the end of its second year of support, but also argued that the support recipient should be allowed to reduce its LOC upon certification that it has met its deployment obligations, rather than needing to wait for USAC to verify that deployment.[69]

25. One commenter, GeoLinks, disagreed and argued that lowering this threshold could introduce risk with regard to RDOF support recipients that had only completed a "minimal amount of

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[65] 47 CFR § 1.3.

[66] *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)) (*Northeast Cellular*).

[67] *See Letter of Credit NPRM* at 9-10, paras. 22-24.

[68] *See, e.g.,* US Telecom Comments at 4-5. In the Letter of Credit NPRM we sought comment on reducing all letters of credit to one year of support, *Letter of Credit NPRM* at 9, para. 22, but commenters did not support this approach. We believe that, consistent with our existing rules, letters of credit should only be reduced to one year of support when a support recipient has met each of its deployment and reporting obligations. Limiting this reduced burden to support recipients that have demonstrated progress toward their obligations helps to ensure that the Commission will be able to draw on sufficient funds in a letter of credit for a support recipient that has not met its deployment and reporting obligations and may therefore be more likely to necessitate recoveries by the Commission. We believe that, consistent with our existing rules, letters of credit should only be reduced to one year of support when a support recipient has met each of its deployment and reporting obligations. Limiting this reduced burden to support recipients that have demonstrated progress toward their obligations helps to ensure that the Commission will be able to drawn on sufficient funds in a letter of credit for a support recipient that has not met its deployment and reporting obligations and may therefore be more likely to necessitate recoveries by the Commission.

[69] Coalition of RDOF Winners Comment at 5-7.

network construction,"[70] and that 10% was not evidence of sufficient network construction to justify an LOC reduction.[71] GeoLinks also argued that there were alternative ways, such as accelerated disbursement of RDOF support, to more efficiently facilitate accelerated broadband deployment. However, we do not find GeoLinks' arguments persuasive.

26. GeoLinks has not provided specific examples of the type of behavior that would lead us to conclude that the LOC reduction we adopt today would introduce risk. Based on our experience administering RDOF and other high-cost programs, deploying service to 10% of required locations by the end of the second year of support shows sufficient progress and sufficiently demonstrates a provider's intent to fulfill its deployment obligations. Further, the permitted reduction in the value of the LOC will alleviate financial burdens and in turn facilitate faster broadband expansion by freeing up capital that can be directed to deployment. Also, the concerns raised by GeoLinks are mitigated by the fact that this change has no impact on the other required deployment milestones; all RDOF support recipients still must deploy qualifying service to 40% of their required locations by the end of their third year of support, and then continue to progressively meet their next obligations, in order to maintain an LOC at an amount equal to one year of support. Moreover, this adjustment does not change the amount owed in the event that the Commission must recover funds from a support recipient due to noncompliance.[72]

27. At the same time, we decline to allow an RDOF support recipient to lower the value of its LOC upon certification of deploying service to at least 10% of its locations by the end of its second year of support, rather than upon USAC's verification of deployment.[73] While the Coalition of RDOF Winners argues that USAC's verification process can be lengthy,[74] the verification process, which may include follow-up questions and requests for further documentation from USAC, is critical to ensuring that reported broadband deployment is actually occurring.[75] We have previously encouraged support recipients to report their deployment on a rolling basis, and to certify their deployment and start the verification process as soon as they are able.[76] Once that verification is complete, the support recipient may obtain and maintain an LOC at a lower value as long as it continues to meet its deployment and reporting obligations.[77]

28. We also decline Talkie Communications, Inc.'s request to further modify (or waive) our rules to allow RDOF support recipients that were authorized to receive funding during the first quarter of 2022 to immediately reduce the value of their LOCs to one year of their support *upon certification* of deploying service to at least 10% of their required locations.[78] Talkie Communications' request would

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[70] GeoLinks Comments at 5-6.

[71] *Id*.

[72] *See* 47 CFR § 54.806(c).

[73] Coalition of RDOF Winners Comment at 2, 5-7.

[74] *Id*. at 7.

[75] *See* USAC, High Cost, Resources, Deployment Verification Reviews, https://www.usac.org/high-cost/resources/fund-verification-reviews/ (last visited Nov. 18, 2024).

[76] *2022 Letter of Credit Waiver Extension Order*, 37 FCC Rcd at 14596, para. 13.

[77] We also note that once a support recipient has passed its initial verification, it may continue to maintain its LOC at a reduced value as long as it timely certifies that it has met its subsequent deployment obligations. A support recipient will only need to obtain a new LOC at the increased required amounts if it is subsequently determined to be out of compliance with broadband deployment milestones. *See 2022 Letter of Credit Waiver Extension Order*, 37 FCC Rcd at 14595, para. 12.

[78] *See* Letter from Philip J. Macres, Counsel, Talkie Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-144 et al. (filed Dec. 4, 2024); Petition for Waiver of Talkie Communications, Inc. WC Docket No. 24-144 et al. (filed Dec. 4, 2024). No other providers have submitted similar requests for exemption from the verification requirement.

permit it and other potentially similarly positioned recipients to unilaterally reduce the value of the LOC even before USAC could conduct a verification.

29. The relief provided in this Order, which will allow providers to lower the value of their LOCs to one year of support only upon the completion of the verification process, strikes the appropriate balance between relieving burdens on providers and ensuring that support recipients only reduce the values of their letters of credit after their deployment progress has been verified by an independent source, rather than relying on the recipient's self-certification. Even though we deny Talkie's additional request, the changes we make in this Order will enable Talkie to lower the value of its LOC sooner than it otherwise would have been able under the originally adopted rule.

30. Additionally, we are mindful that allowing for the reduction of an LOC before any verification process has been completed could ultimately undermine the critical role that the verification process plays in ensuring that RDOF support recipients deploy service to their required locations and preserving carriers' incentive to fully cooperate during the verification process. Moreover, there is ultimately no financial penalty for recipients who pass the verification process. Other providers, to remain compliant with our LOC rules, have been required to obtain new LOCs at increased values during the pendency of USAC's verification process, and those support recipients were then able to lower the values of their LOCs upon the successful completion of that process.

C. CAF II Auction Letter of Credit Alignment

31. In the *Letter of Credit NPRM*, we sought comment on allowing all CAF II support recipients that met each of their deployment and reporting obligations to follow the RDOF LOC rules,[79] which allow support recipients that have met each of their deployment obligations to lower the value of their LOCs to one year of their total support,[80] in contrast with the more modest reductions permitted under the CAF II LOC rules.[81] All commenters supported this proposal, which we now adopt.[82]

32. In 2022, when the Bureau sought comment on extending the waiver of the CAF II LOC rules, it proposed limiting that waiver with a more "tailored" approach by permitting application of the waiver to those recipients that have deployed the supported broadband networks as required.[83] The Bureau ultimately adopted this proposal, reasoning that the Commission will most likely need to draw on the LOCs of the CAF II support recipients that have failed to comply with the program's deployment obligations, reporting requirements, and other program rules and deadlines. Therefore, when deciding to extend the waiver applying the RDOF letter of credit rules to the CAF II program, the Bureau limited the waiver relief *only* to the CAF II recipients with the lowest risk of non-compliance as measured by the program's deployment and reporting milestones. Accordingly, all CAF II support recipients that are currently following the RDOF's LOC rules have met each of their deployment and reporting deadlines.

33. We will continue to allow those CAF II recipients that have met each of their deployment and reporting deadlines to maintain LOCs under the RDOF rules. These recipients have shown that they are in compliance with the requirements of the CAF II program, and that this reduction in the LOC

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[79] *See Letter of Credit NPRM* at 10, para. 25.

[80] *See* 47 CFR § 54.804(c)(1)(v).

[81] *See* 47 CFR § 54.315(c)(1)(i)-(ii).

[82] *See* App'x A (adding 47 CFR § 54.315(c)(1)(iii)). We clarify that a CAF II support recipient that has met the deployment milestones set forth in 47 CFR § 54.315(c)(1)(i)-(ii) but has missed a previous deployment or reporting milestone may take advantage of the LOC reductions set forth in those sections, but may not take advantage of 47 CFR § 54.315(c)(1)(iii) and obtain a new LOC that follows the RDOF LOC rules.

[83] *Connect America Fund, et al.,* Public Notice, 37 FCC Rcd 9580, 9581 (WCB 2022) (*2022 Letter of Credit Waiver Extension Public Notice*).

amount will serve the public interest by freeing up additional capital for these recipients, which will allow them to more efficiently deploy broadband service throughout their service areas.

34. Since the Bureau's existing waiver will end before our amendments to section 54.315(c)(1) of the Commission's rules take effect, we extend, on our own motion, the existing waiver to permit CAF II recipients that have met each of their deployment and reporting obligations to maintain LOCs pursuant to the RDOF rules until the amended rule takes effect. Since the Commission's rules will soon be changed and will at that point be consistent with the existing waiver for certain CAF II support recipients, it will serve the public interest to avoid requiring those providers from incurring the costs to increase their letters of credit due to the end of the current waiver, only to be permitted to lower them again when today's rule changes become effective.[84]

D. Other Proposals

35. We decline to adopt several other proposals from commenters for the reasons explained below.

36. *LOC Requirement Term*. In its comments, WISPA argued that once a CAF II or RDOF support recipient meets its 80% deployment obligation, it should be allowed to retire its LOC.[85] We disagree. While meeting its 80% deployment obligation is evidence of substantial progress, we believe that the security the LOC provides remains necessary until a recipient has completed all of its deployment obligations. We note, however, that RDOF support recipients, and CAF II recipients that have met all of their deployment and reporting obligations, are able to reduce the value of their LOCs to one year of support as long as they have met their previous deadlines, which will undoubtedly reduce the financial burden of maintaining those LOCs.

37. *Credit Unions*. We also decline at this time to adopt any eligibility requirements for credit unions to issue program LOCs.[86] While credit unions may meet a "well capitalized" standard similar to the one we rely upon today for banks,[87] based on the record and further review of how to determine whether a credit union is "well capitalized", we believe the administration of this standard would pose additional challenges for the Administrator to verify a credit union's capitalization status as compared to the status of United States banks that are insured by the FDIC.[88] The inclusion of credit unions is therefore not sufficiently supported by the record and we decline to make this change at this time.

38. *Surety Bonds*. We also decline to allow surety bonds in lieu of LOCs.[89] The Commission has previously considered and declined to accept performance bonds for the programs, concluding that "[LOCs] permit the Commission to immediately reclaim support that has been provided in the event the recipient is not furthering the objectives of universal service by complying with the Commission's rules or requirements. They also have the added advantage of minimizing the possibility that the support becomes property of a recipient's bankruptcy estate for an extended period of time, thereby preventing the funds from being used promptly to accomplish our goals."[90] While some commenters supported

[84] *See* 47 CFR § 1.3; *Northeast Cellular*, 897 F.2d at 1166.

[85] WISPA Comments at 9.

[86] *See* America's Credit Unions Comments at 1-4.

[87] *See* 12 CFR § 702.102(a).

[88] *See* Letter from Michael H. Pryor, Counsel, America's Credit Unions, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-144, at 3-4 (filed Oct. 24, 2024) (ACU *Ex Parte*).

[89] *See* National Association of Surety Bond Producers Comments.

[90] *CAF Phase II Auction Order*, 31 FCC Rcd at 5990, para. 120.

allowing performance bonds instead of LOCs,[91] the Commission's previously articulated concerns regarding the potential complications of relying on performance bonds continue to be persuasive, and such changes seem unnecessary when the support recipients in the programs at issue are already able to obtain LOCs, with the rule amendments made earlier in this Order. In addition to these concerns, allowing surety bonds to be used in the middle of an ongoing program would not lead to efficient and effective program administration.

39. *LOC Requirements on Tribal Lands*. Finally, the National Tribal Telecommunications Association argues for Tribal-specific modifications to our LOC requirements to facilitate broadband deployment on Tribal lands.[92] While we are mindful of the specific challenges that some Tribal carriers may face, the record does not show the need for wholesale changes at this time to facilitate deployment on Tribal lands, and we believe that those challenges are best addressed on an individual basis. Additionally, making wholesale changes to our rules in the middle of an ongoing program would be unnecessary and could create confusion for support recipients.[93] Given the difficulties some Tribal carriers have collateralizing assets to support a LOC, however, we will consider waiving the relevant LOC requirements on an individual basis consistent with the Commission's waiver standard, and we do not foreclose examining in future support programs whether Tribal carriers should be permitted to rely on alternatives to LOCs.

IV. PROCEDURAL MATTERS

40. *Paperwork Reduction Act Analysis*. This document does not contain new or substantively modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). This document may contain non-substantive modifications to an approved information collection. Any such modifications will be submitted to the Office of Management and Budget (OMB) for review pursuant to OMB's non-substantive modification process.

41. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[94] requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[95] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the Report and Order on small entities. The FRFA is set forth in Appendix B.

42. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, OMB, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Report and Order and Order on Review to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

43. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 5(c), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c),

[91] *See, e.g.*, WISPA Reply at 9-10.

[92] NTTA Comments at 5.

[93] *See, e.g.*, *Connect America Fund, et al.,* Order, 36 FCC Rcd 13293 (WCB 2021) (*Redwire Waiver Order*).

[94] 5 U.S.C. §§ 601–612. 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 (1996).

[95] 5 U.S.C. § 605(b).

214, 254, 303(r), and 403, and sections 1.1, 1.3, and 1.421 of the Commission's rules, 47 CFR §§ 1.1, 1.3, and 1.425, that this Order IS ADOPTED.

44. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 254, and section 1.3 of the Commission's rules, 47 CFR § 1.3, that sections 47 CFR § 54.315(c)(2)(i)(B), 47 CFR § 54.804(c)(2)(i)(B), and 47 CFR § 54.1508(c)(1)(ii) of the Commission's rules ARE WAIVED to the limited extent provided herein and pursuant to section 1.103(a) of the Commission's rules, 47 CFR § 1.103(a), such waiver SHALL BE EFFECTIVE upon release.

45. IT IS FURTHER ORDERED that the Petition for Waiver filed by Talkie Communications, Inc., is DENIED as described herein.

46. IT IS FURTHER ORDERED that Part 54 of the Commission's rules IS AMENDED as set forth in Appendix A, and that rule amendments to §§ 54.315(c)(2)(i)(B); 54.804(c)(2)(i)(B); 54.1016(a)(2)(i)(B); and 54.1508(c)(1)(ii) SHALL BE EFFECTIVE six months after publication of this item in the Federal Register .

47. IT IS FURTHER ORDERED that Part 54 of the Commission's rules IS AMENDED as set forth in Appendix A, and that all other rule amendments SHALL BE EFFECTIVE 30 days after publication in the Federal Register.

48. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

49. IT IS FURTHER ORDERED that the Commission's Office of the Secretary SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 54 to read as follows:

PART 54- UNIVERSAL SERVICE

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

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, and 1302, unless otherwise noted.

2. Amend §54.315 by adding paragraph (c)(1)(iii) and revise paragraph (c)(2)(i)(B) to read as follows:

§ 54.315 Application process for Connect America Fund phase II support distributed through competitive bidding.

* * * * *

(c)(1)(iii) A recipient that has met each of its deployment and reporting obligations may obtain a new letter of credit that follows the Rural Digital Opportunity Fund's rules as set forth in § 54.804(c)(1)(v).

* * * * *

(c)(2)(i)(B) That is well capitalized, as defined by federal bank regulations promulgated by the Federal Deposit Insurance Corporation, the Federal Reserve, and the Office of the Comptroller of the Currency; or

* * * * *

3. Amend §54.804 by revising paragraph (c)(2)(i)(B) to read as follows:

§ 54.804 Rural Digital Opportunity Fund application process

* * * * *

(c)(2)(i)(B) That is well capitalized, as defined by federal bank regulations promulgated by the Federal Deposit Insurance Corporation, the Federal Reserve, and the Office of the Comptroller of the Currency; or

* * * * *

4. Amend §54.1016 by revising paragraph (a)(2)(i)(B) to read as follows:

§ 54.1016 Letter of Credit

* * * * *

(a)(2)(i)(B) That is well capitalized, as defined by federal bank regulations promulgated by the Federal Deposit Insurance Corporation, the Federal Reserve, and the Office of the Comptroller of the Currency; or

* * * * *

5. Amend §54.1508 by revising paragraph (c)(1)(ii) to read as follows:

§ 54.1508 Letter of credit for stage 2 fixed support recipients

* * * * *

(c)(1)(ii) That is well capitalized, as defined by federal bank regulations promulgated by the Federal Deposit Insurance Corporation, the Federal Reserve, and the Office of the Comptroller of the Currency; or

* * * * *

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA)[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Connect America Fund et al. Notice of Proposed Rulemaking* released in June 2024 (*LOC NPRM*).[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the *LOC NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

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

2. The *Report and Order* makes targeted modifications to the requirements for Letters of Credit (LOCs) that recipients of Universal Service Fund (USF) high cost support awarded through a competitive process must obtain. Rapidly deploying broadband to areas that currently do not have access to it is a key goal of the Commission's high cost programs that award support through competitive bidding processes. In order to ensure that our investments are protected, we require support recipients to obtain and maintain LOCs.

3. The *Report and Order* takes steps to ensure that USF high-cost support recipients have a wider range of banks from which they can obtain and maintain LOCs by modifying requirements that apply to recipients of USF high-cost support awarded through competitive mechanisms to define a United States bank as "acceptable to the Commission," if it is insured by the Federal Deposit Insurance Corporation (FDIC) and if it meets the criteria to be considered "well capitalized" by federal bank supervisory agencies. Additionally, we allow Rural Digital Opportunity Fund (RDOF) support recipients to lower the value of their LOC if they've deployed service to 10% of their required locations, rather than 20%, by the end of their second year support, and we allow Connect America Fund Phase II (CAF II) support recipients that have met each of their deployment and reporting obligations to follow the RDOF's LOC rules. Each of these changes will free up capital for program support for small and other recipients, and will help them more efficiently deploy broadband services in areas that need it.

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

4. There were no comments filed that specifically addressed the rules and policies proposed in the *Letter of Credit NPRM*.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010,[4] which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.

6. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-12 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Public Law No. 104-121, 110 Stat. 857 (1996).

[2] *Connect America Fund et al.,* WC Docket Nos. 10-90 et al., Notice of Proposed Rulemaking, FCC 24-64, Appx. A (June 7, 2024) (*LOC NPRM*).

[3] *See* 5 U.S.C. § 604.

[4] 5 U.S.C. § 604(a)(3).

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

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act."[7] 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.[8]

8. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[9] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[10] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[11]

9. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[12] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[13] Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[14]

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[5] *Id.* § 604(a)(4).

[6] *Id*. § 601(6).

[7] *Id*. § 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 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."

[8] 15 U.S.C. § 632.

[9] 5 U.S.C. § 601(3)-(6).

[10] *See* SBA, Office of Advocacy, "What's New With Small Business?," https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf (Mar. 2023).

[11] *Id*.

[12] 5 U.S.C. § 601(4).

[13] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[14] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO

(continued….)

10. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[15] U.S. Census Bureau data from the 2022 Census of Governments[16] indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[17] Of this number, there were 36,845 general purpose governments (county,[18] municipal, and town or township[19]) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts[20]) with enrollment populations of less than 50,000.[21] Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of "small governmental jurisdictions."[22]

11. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.[23] Transmission facilities may be based on a single technology or a

(Continued from previous page)
BMF data for businesses for the tax year 2022 with revenue less than or equal to $50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

[15] 5 U.S.C. § 601(5).

[16] 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/economic-census/year/2022/about.html.

[17] *See* U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

[18] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[19] *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

[20] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html. There were 11,879 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

[21] While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[22] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.[24] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[25] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[26]

12. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[27] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[28] Of this number, 2,964 firms operated with fewer than 250 employees.[29] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.[30] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[31] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers[32] is the closest industry with an SBA small business size standard.[33] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[34]

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[23] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311. At this time, the 2022 Economic Census data is not available.

[24] *Id.*

[25] *Id.*

[26] Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

[27] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[28] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[29] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[30] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[31] *Id.*

[32] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311. At this time, the 2022 Economic Census data is not available.

[33] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[34] Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs),

(continued….)

The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[35] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[36] Of this number, 2,964 firms operated with fewer than 250 employees.[37] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.[38] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[39] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers[40] is the closest industry with an SBA small business size standard.[41] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[42] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[43] Of this number, 2,964 firms operated with fewer than 250 employees.[44] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.[45] Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.[46] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

(Continued from previous page)
Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[35] *Id.*

[36] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[37] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[38] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[39] *Id.*

[40] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311. At this time, the 2022 Economic Census data is not available.

[41] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[42] *Id.*

[43] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[44] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[45] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[46] *Id.*

15. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.[47] Wired Telecommunications Carriers[48] is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[49] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[50] Of this number, 2,964 firms operated with fewer than 250 employees.[51] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers.[52] Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.[53] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers[54] is the closest industry with a SBA small business size standard.[55] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[56] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[57] Of this number, 2,964 firms operated with fewer than 250 employees.[58] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or

[47] Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[48] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[49] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[50] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[51] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[52] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[53] *Id.*

[54] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[55] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[56] *Id.*

[57] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[58] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

fewer employees.[59] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

17. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.[60] The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.[61] Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[62] Mobile virtual network operators (MVNOs) are included in this industry.[63] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[64] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[65] Of that number, 1,375 firms operated with fewer than 250 employees.[66] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services.[67] Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.[68] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers[69] is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[70] Mobile virtual network operators (MVNOs) are

[59] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[60] U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[61] *Id.*

[62] *Id*.

[63] *Id*.

[64] 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[65] U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[66] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[67] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[68] *Id.*

[69] U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[70] *Id.*

included in this industry.[71] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[72] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[73] Of that number, 1,375 firms operated with fewer than 250 employees.[74] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services.[75] Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.[76] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers[77] is the closest industry with a SBA small business size standard.[78] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[79] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[80] Of this number, 2,964 firms operated with fewer than 250 employees.[81] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.[82] Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.[83] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications

[71] *Id.*

[72] 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[73] U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[74] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[75] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[76] *Id.*

[77] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[78] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[79] *Id.*

[80] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[81] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[82] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[83] *Id.*

Resellers[84] is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[85] Mobile virtual network operators (MVNOs) are included in this industry.[86] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[87] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[88] Of that number, 1,375 firms operated with fewer than 250 employees.[89] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services.[90] Of these providers, the Commission estimates that 61 providers have 1,500 or fewer employees.[91] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

21. *Fixed Microwave Services.* Fixed microwave services include common carrier,[92] private-operational fixed,[93] and broadcast auxiliary radio services.[94] They also include the Upper Microwave Flexible Use Service (UMFUS),[95] Millimeter Wave Service (70/80/90 GHz),[96] Local Multipoint Distribution Service (LMDS),[97] the Digital Electronic Message Service (DEMS),[98] 24 GHz Service,[99]

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[84] U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[85] *Id.*

[86] *Id*.

[87] 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[88] U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[89] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[90] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[91] *Id.*

[92] 47 CFR Part 101, Subparts C and I.

[93] *Id.* Subparts C and H.

[94] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[95] 47 CFR Part 30.

[96] 47 CFR Part 101, Subpart Q.

[97] *Id.* Subpart L.

[98] *Id.* Subpart G.

[99] *Id.*

Multiple Address Systems (MAS),[100] and Multichannel Video Distribution and Data Service (MVDDS),[101] where in some bands licensees can choose between common carrier and non-common carrier status.[102] Wireless Telecommunications Carriers (except Satellite)[103] is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[104] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[105] Of this number, 2,837 firms employed fewer than 250 employees.[106] Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

22. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.[107]

23. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

24. *Cable and Other Subscription Programming*. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.[108] The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.[109] The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for

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[100] *Id.* Subpart O.

[101] *Id.* Subpart P.

[102] 47 CFR §§ 101.533, 101.1017.

[103] U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[104] 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[105] U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[106] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[107] 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

[108] *See* U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* https://www.census.gov/naics/?input=515210&year=2017&details=515210.

[109] *Id.*

transmission to viewers.[110] The SBA small business size standard for this industry classifies firms with annual receipts less than $47 million as small.[111] Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.[112] Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more.[113] Based on this data, the Commission estimates that a majority of firms in this industry are small..

25. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[114] Based on industry data, there are about 420 cable companies in the U.S.[115] Of these, only seven have more than 400,000 subscribers.[116] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[117] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[118] Of these, about 639 have more than 15,000 subscribers.[119] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

26. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[120] For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator.[121] Based on industry data, only six cable system operators have

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110 *Id.*

111 *See* 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

112 *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

113 *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than $500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

114 47 CFR § 76.901(d).

115 S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited July 23, 2023).

116 S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited July 23, 2023); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

117 47 CFR § 76.901(c).

118 S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited July 23, 2023).

119 S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited July 23, 2023).

120 47 U.S.C. § 543(m)(2).

121 *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (*2023 Subscriber Threshold PN*). In this Public Notice, the Commission determined that there

(continued….)

more than 498,000 subscribers.[122] Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[123] Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

27. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.[124] Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.[125] The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.[126] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[127] Of this number, 624 firms had fewer than 250 employees.[128] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

28. *Satellite Telecommunications*. This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[129] Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $44 million or less in annual receipts as small.[130] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[131] Of this number, 242 firms had revenue of less than

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were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id*. This threshold will remain in effect until the Commission issues a superseding Public Notice. *See* 47 CFR § 76.901(e)(1).

[122] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q (*last visited Sept. 27, 2023); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[123] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. *See* 47 CFR § 76.910(b).

[124] U.S. Census Bureau, *2017 NAICS Definition, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,"* https://www.census.gov/naics/?input=334220&year=2017&details=334220.

[125] *Id.*

[126] 13 CFR § 121.201, NAICS Code 334220.

[127] U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 334220, https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[128] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[129] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[130] *See* 13 CFR § 121.201, NAICS Code 517410.

[131] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517410,
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$25 million.[132] Consequently, using the SBA's small business size standard most satellite telecommunications service providers can be considered small entities. The Commission notes however, that the SBA's revenue small business size standard is applicable to a broad scope of satellite telecommunications providers included in the U.S. Census Bureau's Satellite Telecommunications industry definition. Additionally, the Commission neither requests nor collects annual revenue information from satellite telecommunications providers, and is therefore unable to more accurately estimate the number of satellite telecommunications providers that would be classified as a small business under the SBA size standard.

29. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[133] Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.[134] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[135] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[136] Of that number, 2,837 firms employed fewer than 250 employees.[137] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.[138] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[139] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

30. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[140] This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from,

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https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[132] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[133] U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[134] *Id.*

[135] 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[136] U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[137] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[138] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[139] *Id.*

[140] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

satellite systems.[141] Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.[142] The SBA small business size standard for this industry classifies firms with annual receipts of $40 million or less as small.[143] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[144] Of those firms, 1,039 had revenue of less than $25 million.[145] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

31. *Wired Broadband Internet Access Service Providers (Wired ISPs)*.[146] Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.[147] Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.[148] The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.[149] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[150] Of this number, 2,964 firms operated with fewer than 250 employees.[151]

32. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies.[152] The Commission does not collect data on the number of

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[141] *Id.*

[142] *Id.*

[143] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[144] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. At this time, the 2022 Economic Census data is not available.

[145] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[146] Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

[147] 47 CFR § 1.7001(a)(1).

[148] U.S. Census Bureau, *2017 NAICS Definition*, "*517311 Wired Telecommunications Carriers*," https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[149] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[150] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[151] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[152] *See* Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 *(IAS Status 2019)*, Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-

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employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2022 Communications Marketplace Report*,[153] we believe that the majority of wireline Internet access service providers can be considered small entities.

33. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.[154] Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"[155] Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.[156] Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).[157] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[158] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[159] Of that number, 2,837 firms employed fewer than 250 employees.[160]

34. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 1,237 fixed wireless and 70 mobile wireless providers of connections over 200 kbps in at least one direction.[161] The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2022 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,[162] as

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1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

[153] *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

[154] Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

[155] Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 *(IAS Status 2019)*, Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports.

[156] 47 CFR § 1.7001(a)(1).

[157] U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[158] 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[159] U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[160] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[161] *IAS Status 2019,* Fig. 30.

well as on terrestrial fixed wireless broadband providers in general,[163] we believe that the majority of wireless Internet access service providers can be considered small entities.

35. *Internet Service Providers (Non-Broadband)*. Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.[164] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[165] For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[166] Of those firms, 1,039 had revenue of less than $25 million.[167] Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

36. *All Other Information Services*. This industry comprises establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).[168] The SBA small business size standard for this industry classifies firms with annual receipts of $30 million or less as small.[169] U.S. Census Bureau data for 2017 show that there were 704 firms in this industry that operated for the entire year.[170] Of those firms, 556 had revenue of less than $25 million.[171] Consequently, we estimate that the majority of firms in this industry are small entities.

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[162] *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 27, paras. 64-68. (2022) (*2022 Communications Marketplace Report*).

[163] *Id.* at 8, para. 22.

[164] U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[165] 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[166] U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[167] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[168] U.S. Census Bureau, *2017 NAICS Definition, "519190 All Other Information Services,"* https://www.census.gov/naics/?input=519190&year=2017&details=519190.

[169] 13 CFR § 121.201, NAICS Code 519190 (as of 10/1/22, NAICS Codes 519290).

[170] U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 519190, https://data.census.gov/cedsci/table?y=2017&n=519190&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[171] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue of less than $100,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

37. This *Report and Order* modifies existing reporting, recordkeeping, and compliance obligations for USF high-cost recipients awarded through competitive mechanisms. Specifically, we adopt an alternative method of evaluating a bank's ability to provide a LOC to winners of Auction 903 and 904 support, along with winners of 5G Fund auctions. These recipients will now be required to obtain LOCs from United States banks that are insured by the FDIC and that meet the criteria to be considered "well capitalized" by federal bank supervisory agencies, instead of relying on Weiss bank safety ratings, which limit the number of acceptable banks. The *Report and Order* will allow more banks to issue program LOCs, and will allow small and other program support recipients to lower the value of the LOCs they are required to maintain. We also allow Auction 904 support recipients who have deployed service to at least 10% of their required locations by the end of their second year of support to lower the value of their LOCs. Finally, we allow Auction 903 support recipients that have met their deployment and reporting obligations to maintain LOCs in accordance with Auction 904's rules.

38. The changes in the *Report and Order* are intended to reduce the administrative burden on small and other recipients of Auctions 903 and 904 support and 5G Fund support. The changes will allow support recipients, including small entities, to minimize their expenses by maintaining their existing LOC with the bank that issued it, instead of obtaining a new one. As a result of these changes, if there is an economic impact on small entities, we expect the impact to be a positive one. These changes would not add any additional compliance requirements for small entities, or additional costs for professional skills, because support recipients are already required to maintain LOCs under the current rules.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

39. The requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities…including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[172]

40. The Commission has considered the economic impact on small entities in reaching its final conclusions and taking action in this proceeding. The rules that we adopt in the *Report and Order* will provide greater certainty and flexibility for small and other carriers. For example, we now allow any bank that is "well capitalized" to evaluate a bank's fitness to issue program LOCs, instead of using the previously required Weiss ratings. This will expand the pool of eligible banks which will increase the flexibility for all program support recipients, including small entities.

41. We also considered alternatives to our existing rules, by seeking comment on alternative standards that could be used to evaluate the health and suitability of a bank. For example, Bank of America proposed on alternative method of determining a bank's eligibility that includes the current Weiss rating of B- or better or a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's, which is the requirement for non-U.S banks. WISPA proposed that CAF II or RDOF support recipients that met 80% of their obligations should be allowed to retire their LOCs, instead of the current requirement for completing all deployment obligations. Other alternatives proposed allowing banks that were "adequately capitalized" or those with lower Weiss ratings to issue LOCs. We disagree with these and other alternative proposals. The "well capitalized" standard allows us to honor the Commission's responsibility to ensure that our programs' expenditures are protected, while minimizing disruption for support recipients and their banks. Retaining the requirement that support recipients maintain LOCs until all deployment obligations are met

[172] 5 U.S.C. § 604(a)(6).

provides security that funding is protected until these obligations are complete. Some alternative proposals would reduce the ability of smaller banks to be eligible to provide LOCs, which is counter to our goal of expanding eligibility of banks, and may lower barriers to participation for small and other entities. In light of the economic burdens that auction support recipients could face by being required to obtain new LOCs from different banks, we considered the most effective ways of allowing those support recipients to maintain their LOCs with the banks that originally issued them, as long as we are confident that the bank's economic health is sufficient. This change will free up capital to support small and other recipients which will allow them to more efficiently deploy broadband service.

42. We also allowed RDOF support recipients that deployed service to 10% of their required locations by the end of their second year of support to reduce the value of their LOC to one year of their totally support, upon USAC's verification. Commenters opposed to these changes did not provide alternatives or specific examples of behavior that would lead us to conclude this reduction would be inappropriate. Further, the USAC verification process is critical to ensuring that broadband deployment is actually occurring. Finally, we allowed Auction 903 support recipients that have met all of their deployment and reporting obligations to continue to follow the RDOF's LOC rules, which will allow small and other Auction 903 support recipients that have met their obligations to free up additional capital and more efficiently deploy broadband service.

G. Report to Congress

43. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[173] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.[174]

[173] 5 U.S.C. § 801(a)(1)(A).

[174] *See id*. § 604(b).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Connect America Fund, et al,* WC Docket Nos. 10-90, 18-143, 19-126, 24-144, Report and Order and Order (Dec. 11, 2024).

If you want to build a digital future that works for everyone, you need to start with connecting everywhere in this country to high-speed broadband. For the first time in history, we have many programs to do it. We have an unprecedented commitment to making sure no individual or community remains stuck on the wrong side of the digital divide.

Getting this done right requires extraordinary attention to detail. One of the details that matters—really matters—is making sure that the funds we provide go to meaningful broadband buildout. To ensure this is the case, the Federal Communications Commission has historically required that carriers receiving certain funds for service in high-cost areas secure a letter of credit from a qualified bank. This protects the integrity of our programs and helps ensure our ability to recoup support in the event of default. These are the right goals. But over time we have found that aspects of our letter of credit requirements are so stringent that they can get in the way of building better broadband. That is why we update them here. By doing so, we can help speed the deployment of high-speed service to those in places without.

I want to thank the staff responsible for this effort, including Nathan Eagan, Jodie Griffin, Trent Harkrader, Jesse Jachman, and Heidi Lankau from the Wireline Competition Bureau; Malena Barzilai, Thomas Driscoll, Joel Graham, Michael Janson, Richard Mallen, and Wisam Naoum from the Office of General Counsel; Mary Lovejoy, Gary Michaels, Mark Montano, and Kelly Quinn from the Office of Economics and Analytics; Garnet Hanly from the Wireless Telecommunications Bureau; and Michael Gussow and Joycelyn James from the Office of Communications Business Opportunities.