

requirements, definitions, and performance measures would not be a significant burden for any eligible applicant, including a small entity.

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

*Paperwork Reduction Act of 1995 (PRA):* These proposed priorities, requirements, definitions, and performance measures do not contain any information collection requirements.

*Regulatory Flexibility Act Certification:* The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define "small entities" as for-profit or nonprofit institutions with total annual revenue below \$7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action could affect are eligible research organizations, agencies, institutions of higher education, or partnerships among such entities, or individuals. The Secretary believes that the costs imposed on an applicant by the proposed priorities, requirements, definitions, and performance measures would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by the applicant.

Participation in the Comprehensive Centers program is voluntary. For this reason, the proposed priorities, requirements, definitions, and performance measures would impose no burden on small entities unless they applied for funding under the Comprehensive Centers program using the proposed priorities, requirements, definitions, and performance measures. We expect that in determining whether to apply for Comprehensive Center funds, an eligible entity would evaluate the requirements of preparing an application and implementing a Comprehensive Center, and any associated costs, and weigh them against the benefits likely to be achieved by implementing a Center. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application and implementing a project. The likely benefits of applying for a

Comprehensive Centers program grant include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of such application to create partnerships with other entities in order to assist SEAs.

The Secretary believes that the proposed priorities, requirements, definitions, and performance measures would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

Further, this proposed regulatory action could help a small entity determine whether it has the interest, need, or capacity to implement activities under the program and, thus, prevent a small entity that does not have such an interest, need, or capacity from absorbing the burden of applying.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. The Secretary invites comments from small eligible entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, requests evidence to support that belief.

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other

documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: September 24, 2018.

**Frank Brogan,**

*Assistant Secretary for Elementary and Secondary Education.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[WC Docket No. 10-90; DA 18-929]

#### Wireline Competition Bureau Seeks Comment on Procedures To Identify and Resolve Location Discrepancies in Eligible Census Blocks Within Winning Bid Areas

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, Wireline Competition Bureau seeks comment on several proposals to implement a process for resolving location discrepancies at issue for Phase II auction support recipients.

**DATES:** Comments are due on or before October 29, 2018 and reply comments are due on or before November 13, 2018.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 10-90 by the following method:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Wireline Competition Bureau's document in WC Docket No. 10-90; DA 18-929, released September

10, 2018. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY-A257, Washington, DC 20554 or at the following internet address: <https://www.fcc.gov/document/wcb-seeks-comment-caf-phase-ii-location-discrepancy-procedures>.

## I. Introduction

1. In this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment on several proposals to implement a process for resolving location discrepancies at issue for Phase II auction support recipients. Specifically, the Bureau seeks comment on approaches to identify and resolve apparent discrepancies between the number of model-determined funded locations that Phase II auction support recipients are expected to serve (funded locations) and the actual number of locations that support recipients can serve (actual locations). The Bureau undertakes this action pursuant to the 2018 *Phase II Auction Reconsideration Order*, 83 FR 15982, April 13, 2018, which directed the Bureau to implement a review process to evaluate requests by Phase II auction support recipients who might seek adjustments in defined deployment obligations in exchange for corresponding reductions in support in circumstances where there are not enough actual locations for the provider to serve.

2. Pursuant to the process set forth by the Commission, the Bureau must: (1) Collect probative evidence of actual locations from those Phase II auction support recipients choosing to participate in this process (participants) (including evidence demonstrating that the participants could find no additional actual locations other than those identified with location data); (2) make all such evidence available for review by relevant stakeholders and specify the types of evidence that such stakeholders should submit to challenge such evidence; (3) adjudicate individual claims for relief based on a preponderance of the evidence standard; (4) issue an order when appropriate to reduce deployment obligations and authorized support (on a pro rata basis); and, (5) conduct future audits of evidence submitted by participants. While the Commission set some parameters for certain aspects of this process, it also directed the Bureau to adopt requirements and issue guidance necessary for implementation, consistent with prior Commission direction regarding funded location adjustments. The Commission directed

the Bureau to “release a public notice or order (following its issuance of a notice and opportunity for comment) detailing instructions, deadlines, and requirements for filing valid geolocation data and evidence for both [participants] and commenters.”

## II. Discussion

3. *Definition of an Actual Location.* The Bureau seeks comment on how it should define an actual location for purposes of this review process. In the *CAM Inputs Order*, 79 FR 29111, May 21, 2014, the Bureau defined funded locations as residential and small business locations and excluded enterprise locations assumed to be served with higher bandwidth dedicated fiber, such as community anchor institutions, certain large businesses, and wireless towers assumed to be served with higher bandwidth dedicated fiber. In the *Phase II Auction Reconsideration Order*, the Commission stressed that a CAM location is a residential housing unit or small business served with mass market services and rejected commenters’ arguments in favor of a more expansive definition. In addition, a location need not be occupied when being reported as a served location, but it cannot be abandoned, derelict, condemned, or otherwise uninhabitable.

4. In general, CAF support recipients cannot report unfinished residential or business locations or ongoing or future real estate developments as served locations in satisfaction of build-out requirements. Given that this review process, however, will provide the basis for a participant’s deployment obligation over a 10-year support term, the Bureau seeks comment on whether actual locations should include prospective developments that have a reasonable certainty of coming into existence within the support term. The Bureau seeks comment on the potential evidentiary obstacles to implementing this modification. How might participants learn of such prospective developments and the number of future locations associated with them? Do development plans routinely indicate the number of residential and business units? Is such information available from local governments and authorities, and does the amount and type of information available from such entities vary to a degree that could provide an unfair advantage or disadvantage to participants based on their geographic areas? As an alternative, should the Bureau rely on relevant stakeholders to submit evidence of such locations in their submissions?

5. *Reliability and Validity of Data.* In the *Phase II Auction Reconsideration Order*, the Commission required participants not only to submit location data but also to provide evidence demonstrating that they could not find any additional actual locations in their eligible areas within the state. In doing so, the Commission expressed concern that participants would otherwise report only “cherry pick[ed]” locations, *i.e.*, the easiest and least expensive locations to serve, and omit all other locations. The Commission directed the Bureau to identify the information that must be submitted to fulfill this purpose. The Bureau expects that such information must demonstrate the completeness, reliability, and validity of the actual location data submitted by participants. Accordingly, the Bureau proposes that participants in this review process submit a description in narrative form of the methodologies used to identify structures within their eligible areas and distinguishing actual locations from other kinds of structures.

6. The Bureau seeks comment on whether to require that participants use a particular method to identify the geocoordinates and addresses of actual locations or permit carriers to choose their method(s) and correct for inaccuracies. For purposes of reporting deployed locations, USAC has published guidance on three generally accepted methods of geolocation, *i.e.*, (1) GPS in the field, (2) desktop geolocation using web-based maps and imagery, and (3) automated address geocoding (frequently reliant on third-party address data). Each of these methods will produce variable levels of accuracy in terms of identifying the specific situs of the location. For example, desktop geolocation and, to an even greater extent, automated address geocoding may produce interpolated geocoordinates and addresses that do not describe a situs with the required level of granularity to produce accurate results. Such inaccuracies, in turn, increase the likelihood that the list of actual locations produced by participants will exclude certain locations, such as those adjacent to ineligible areas or those that include multiple dwelling units (MDUs). However, the potential shortcomings of geolocation methods may be minimized through specific practices.

7. The Bureau seeks comment on methodological and evidentiary standards necessary to ensure that participants have used geolocation method(s) consistently and comprehensively to accurately identify all actual locations in eligible areas within the state. How would such

standards differ if the Bureau were to allow any of the three geolocation methods or combinations of such methods? For example, should the Bureau require participants submitting location data based on GPS field research to also submit grid data, mileage receipts, weekly logs, or some other kind of evidence to demonstrate that they used GPS to identify every actual location? Should the Bureau require participants relying on desktop geolocation or automated address geocoding to use more than one application or source? Should the Bureau require such participants to disclose details about the application/source data, such as how and when such data were collected? Should the Bureau require participants using such methods to test the reliability and validity of the source/application data when applied to their specific eligible areas? Should the Bureau require all participants (regardless of geolocation method) to submit photographic evidence demonstrating the reasons for excluding structures from their list? The Bureau seeks comment on these proposals.

8. In the *Phase II Auction Reconsideration Order*, the Commission explained that as part of this review process, “[r]elevant stakeholders would have the opportunity to review and comment on the information [submitted by participants] and to identify other locations . . . .” The Bureau seeks comment on how the Bureau should define “relevant stakeholders.” Specifically, the Bureau proposes that state and local authorities and Tribal governments as representatives of individuals residing in supported areas be allowed to file comments as part of the process. Should the Bureau accept comments from individuals as well? Should the Bureau accept comments from potential customers of participants? If the Bureau were to adopt a broad definition of “relevant stakeholder” that includes all potential customers, how does the Bureau verify that the commenter is a potential customer? Should the Bureau avoid collecting personally identifiable information (PII)? As further discussed below, would a protective order sufficiently protect participants from the premature disclosure and/or misuse of their data?

9. The Bureau seeks comment on the evidence that must be submitted by relevant stakeholders to effectively rebut or refute the participant’s contentions. The Bureau expects that stakeholders will identify specific locations that they assert are wrongfully omitted from the participant’s list of actual locations. The

Bureau proposes that stakeholders seeking to report specific locations omitted from the participant’s list must submit the same kind of location evidence that the Bureau requires of participants, *i.e.*, latitude and longitude coordinates and addresses (or geographic markers if addresses are unavailable), as well as some additional evidence supporting the existence and placement of the location. The Bureau seeks comment on other forms of evidence that could also prove the existence or situs of individual locations. For example, should the Commission accept billing statements, property records, images or pictures of houses at a specific address or intersection? Should the Bureau accept screenshots of houses from Google maps or other publicly available mapping services? How would the Bureau evaluate and weigh such evidence?

10. The Bureau proposes to dismiss any challenge that lacks some evidentiary showing. The Bureau also proposes not to allow stakeholders to submit alternative evidence of locations based on public or private data sources that the stakeholder cannot conclusively demonstrate to be significantly more accurate than the recipient’s data sources. The Bureau seeks comment on these proposals.

11. The Bureau proposes that evidence of omitted locations from relevant stakeholders be submitted in a similar format to the data on actual locations submitted by Phase II auction support recipients. The Bureau intends to review the information submitted by relevant stakeholders and modify lists of actual locations as part of its final adjudicatory decision.

12. *HUBB Reporting of Location Evidence*. The Bureau proposes that participants report tabular data on actual locations, including addresses and geographic coordinates. The Bureau proposes that participants submit such data in the HUBB or a similar web-based data submission application managed by USAC. There are several advantages to this approach. First, the technology used in the HUBB is designed to accept addresses and geographic coordinates for specific locations. Second, the HUBB provides certain data validations, including checks to ensure entries are not duplicates and are located within specific census blocks. Thus, the HUBB facilitates timely correction of data submission errors prior to the close of a filing deadline. Third, the Bureau and USAC have released specific guidance for the reporting of served locations, which may be adapted to the reporting of actual location data for purposes of this review process. Fourth, the use of

the HUBB will help alleviate the burden associated with reporting data on served locations (which all Phase II auction support recipients will need to submit in future years) because such data should be readily convertible to the served location evidence. In this regard, while there is no specific requirement that participants deploy to their reported actual locations in future years, the Bureau expects that, in most instances and absent significant future demographic changes, there will be an overlap between actual locations and served locations. As further discussed below, this overlap should be useful for auditing purposes. Finally, the HUBB permits controlled access to data, which obviates the need to create a separate service for this purpose and limits potential delays associated with such a service. As discussed below, controlled access will also help the Bureau protect location data that may implicate privacy concerns.

13. The Bureau seeks comment on these and other ways the web-based functionality may be used to facilitate the submission of actual location evidence and ways that the HUBB may be adapted to fulfill this purpose. The Bureau also seeks comment on whether participants may face specific obstacles or burdens in submitting location data electronically into the HUBB or a similar system.

14. In the *Phase II Auction Reconsideration Order*, the Commission requires participants to file actual location data “within a year” of the publication of the Phase II auction closing public notice. The Bureau proposes applying this deadline to all evidence that the Bureau ultimately requires of participants.

15. The Bureau proposes to open a window, 14 days before this deadline and ending on the deadline, for participants to certify, under penalty of perjury, the truth and accuracy of their location data and associated petition. The certification will be mandatory and must be signed by an individual with relevant knowledge (such as an officer of the company), certifying under penalty of perjury that the participant has engaged in due diligence to verify statements and evidence presented in this challenge process and that such information is accurate to the best of the certifying party’s knowledge and belief. By opening a filing window rather than permitting participants to certify their data and information at any time during the first year, the Bureau would help ensure that a participant’s data reflects the most recent facts on the ground and that the participant does not omit new or prospective building developments

coming into being toward the end of the one-year time frame for compiling and submitting such evidence.

16. Alternatively, the Bureau could permit certifications at any time prior to the final deadline but would also require participants to monitor their supported areas within the state, add any new locations (or potential developments) or remove any locations determined to be ineligible prior to the two-week time frame proposed above and recertify their data. The Bureau emphasizes that regardless of when participants submit their data and information, they will have a good faith obligation to amend or correct data that they later discover to be inaccurate or incomplete. Such obligation will extend until completion of the 10-year funding term. The Bureau seeks comment on these options.

17. The Bureau proposes that it reviews the actual location evidence submitted by Phase II Auction support recipients and, within 60 days of their filing deadline, announce *prima facie* cases for adjustment based on the submission of relevant and complete data. The Bureau proposes that relevant stakeholders will then have 90 days to submit evidence and rebuttals. Like the data and related filings of participants in this review process, any submission by a relevant stakeholder must be signed by an individual with relevant knowledge, certifying under penalty of perjury, that the information presented is accurate to the best of his or her knowledge and belief. Once this 90-day timeframe expires, the participant will have 15 days to submit a reply. The Bureau seeks comment on the proposed timeframes by which relevant stakeholders must submit their evidence to challenge participant's data and by which participants may reply to such challenge. Specifically, the Bureau seeks comment on whether these proposed timeframes adequately serve our goal of providing a meaningful opportunity for challenge, while concluding this challenge process in a reasonable timeframe. The Bureau proposes that strict adherence to these deadlines is necessary to provide an adequate opportunity for relevant stakeholders and participants to contest data and findings.

18. Consistent with standards of review adopted for similar review processes, the Commission adopted a preponderance of the evidence standard to evaluate the merits of participants' claims for adjustment of their defined deployment obligations. The Bureau also proposes that participants bear the burden of persuasion. Accordingly, if the Bureau finds that the participant has

failed to demonstrate that it is more likely than not that the CAM-estimated number of funded locations do not reflect the facts on the ground, the Bureau will not modify the defined deployment obligation. The Bureau notes that placing the burden of persuasion on the participant encourages the participant to fully present its evidence and further tempers any incentive to "cherry pick" locations.

19. The Commission has directed that, in circumstances where the Bureau determines that modification of the participant's number of funded locations is warranted, it must reduce the authorized support on a pro rata basis. As part of its adjudicatory order, the Bureau will re-authorize support at the new reduced amount. The Bureau proposes that, given the timing of this review process, if the participant has already been authorized to receive support, the Bureau will also order a reduction in future payments for the remainder of the support term proportionally to reflect the total amount of reduction. The Bureau also proposes to allow participants to promptly adjust their letters of credit to reflect the new authorized funding amount once the Bureau's order modifying the authorized support is issued. The Bureau seeks comment on these proposals.

20. The Bureau notes that the Commission treats location data for served locations as non-confidential and has required the public disclosure of such information. The public interest in accessing these data to ensure transparency and oversight, however, is significantly greater than in accessing evidence of actual locations, particularly before the Bureau issues an order concluding its adjudication of the individual merits of a participant's claim. Further, unlike evidence of served locations, unverified lists of actual locations and related evidence may indirectly reveal future deployment plans or other information that could be used to the competitive disadvantage of participants. The responsive comments of relevant stakeholders could potentially link addresses or other information to specific individuals. Such data, if published, could raise important privacy concerns and trigger statutory protections against agency disclosures, such as outlined in the Privacy Act of 1974.

21. The Bureau seeks comment on what steps it should take to ensure that privacy and competitive interests are not compromised. Should the Commission adopt a protective order to control stakeholders' use of participants'

information pending completion of the review process? Should the Bureau require participants and/or relevant stakeholders to seek confidential treatment of their information pursuant to section 0.459 of the Commission's rules or should the Bureau adopt a presumption that such information is confidential, at least until the adjudicatory process is complete? Should or must the Bureau review and aggregate this evidence and release it for public consumption after the Bureau adjudicates the request? Should or must the Bureau release such evidence and findings for all participants at the same time, or can it do so on a rolling basis as it resolves individual requests for relief? The Bureau seeks comment on these issues.

22. Phase II auction support recipients, like all recipients of high-cost support, are subject to compliance audits and other investigations to ensure compliance with program rules and orders. As USF administrator, USAC has the authority and responsibility to audit USF payments. The Commission has designated the Managing Director as the agency official responsible for ensuring "that systems for audit follow-up and resolution are documented and in place, that timely responses are made to all audit reports, and that corrective actions are taken." The Commission resolves contested audit recommendations and findings, either on appeal from the Bureau or directly, if the challenge raises novel questions of fact, law, or policy.

23. In the *Phase II Auction Reconsideration Order*, the Commission also specified that any data submitted by participants pursuant to this review process is subject to potential future audit. The Commission directed the Bureau to adopt parameters of such an audit process. Accordingly, the Bureau seeks comment on this audit process. Specifically, should the Bureau define circumstances that will trigger an audit, such as defaulting on deployment obligations in subsequent years? Should an audit be triggered if a participant frequently misreports served locations evidence? Should an audit be triggered if, at the end of the support term, the reported served locations differ significantly from the reported actual locations—for instance, if 30 percent (or some higher percentage) of the reported served locations are not included on the actual locations list? Should the Bureau audit all participants within a set time frame, for instance, in the two years following any modification to a defined deployment obligation?

24. Under section 54.320(b) of the Commission's rules, all recipients of

high-cost support must maintain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules and must maintain such records for a minimum of 10 years from the receipt of funding. Are the current record retention requirements adequate to facilitate audits of participants? Are any additional measures necessary to ensure that participants retain and provide the relevant and complete documentation to auditors upon request?

25. If, during the audit, it is discovered that the participant failed to report actual locations when it certified its data, what are the appropriate consequences? Should the Bureau retroactively require that the participant deploy to the CAM estimated number of locations despite the reduction in support? If the participant then defaults by failing to build to the CAM estimated number of locations, should the participant be required to refund support in accordance with default procedures? Should the Bureau treat the participant as if it has defaulted on its deployment obligations in total and seek recovery of all authorized support? Should consequences differ if it is determined that the participant intentionally omitted actual locations or was grossly negligent in researching locations? The Bureau notes that if it determines that the participant intentionally or negligently misrepresented actual locations, the filing may trigger possible forfeiture penalties.

26. The Bureau seeks comment on these proposals and on any alternatives. If commenters believe different procedures would better serve the Commission's goals of granting Phase II auction support recipients relief from defined deployment obligations that may be impossible to fulfill (as opposed to merely difficult or more expensive to fulfill), and providing funding recipients with some certainty about their defined deployment obligations as they plan deployments for future years (without prematurely excluding ongoing developments), they should provide a detailed description of their preferred alternative. The Bureau welcomes suggested alternatives that minimize the impact of these proposals on small businesses, as well as comments regarding the cost and benefits of implementing these proposals.

### III. Procedural Matters

#### A. Initial Paperwork Reduction Act

27. This document contains proposed modified information collection

requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

28. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Public Notice. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Public Notice. The Commission will send a copy of the Public Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Public Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

29. The Bureau is implementing a process, adopted by the Commission in its *Phase II Auction Reconsideration Order*, for the modification of defined deployment obligations where the number of locations within a funding recipient's bid areas within the state (actual locations) fall short of the CAM-estimated number of locations (funded locations). The Commission directed the Bureau to gather evidence of, actual locations from Phase II auction support recipients participating in this review process (participants), included addresses and geocoded data (actual location data) within one year of the release of the Phase II auction closing public notice as well as additional evidence, as specified by the Bureau, demonstrating no additional actual locations could be found; to enable relevant stakeholders to challenge such evidence and submit additional evidence of actual locations; to adjudicate participants' claims for relief based on a preponderance of the evidence standard; and, where such standard has been met, to reduce participants' obligations and support on a pro rata basis. The Commission also specified the data and information submitted by participants in support of

their claims for relief are subject to future audit. The Commission directed the Bureau to adopt rules, requirements, deadlines, and other measures necessary to implement its review process after providing public notice and seeking public comment.<sup>7</sup>

30. This Public Notice proposes that participants file actual location data in the High Cost Broadband Portal (HUBB) maintained by the Universal Service Administrative Company (USAC), and separately file a narrative petition detailing the reliability and validity of such data to demonstrate that no additional locations may be found. This Public Notice seeks comment on the various forms of evidence that should be considered for purposes of determining reliability and validity as well as the kinds of evidence that relevant stakeholders should submit to effectively challenge participants' evidence. The Bureau emphasizes that it will not consider assertions about actual locations that are offered without supporting evidence. The Bureau clarifies the Commission's one-year deadline for the submission of location data and proposes that participants file their associated petitions by this deadline. The Bureau also proposes specific deadlines for the filing of petitions by relevant stakeholders and the filing of replies. The Bureau proposes that both participants and relevant stakeholders certify, under penalty of perjury, the truth and accuracy of all such submissions. In addition, the Bureau seeks comment on various proposals relating to the adjudication of requests for support modifications and future auditing processes relating to participants' submissions.

31. 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 proposed rule revisions, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A "small-business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

32. Our actions, over time, may affect small entities that are not easily categorized at present. The Bureau therefore describes here, at the outset, three comprehensive small entity size

standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

33. 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." Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

34. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37, 132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data the Bureau estimates that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."

35. In this Public Notice, the Bureau seeks public comment on procedures for implementing a review process for the modification of funding awarded under the Connect America Phase II auction. Certain proposals could result in additional reporting requirements.

36. If the Bureau implements the Phase II challenge process articulated above, commenters, including small entities, wishing to participate would be required to comply with the listed reporting and evidentiary standards. This includes filing a challenge along with supporting evidence and serving a copy of the challenge on any challenged party within a specified timeframe.

37. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

38. The Public Notice seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the Public Notice, and the Commission will consider alternatives that reduce the burden on small entities.

39. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Public Notice, in reaching its final conclusions and taking action in this proceeding. The reporting requirements in the Public Notice could have an impact on both small and large entities. The Commission believes that any impact of such requirements is outweighed by the accompanying public benefits. Further, these requirements are necessary to ensure that the statutory goals of Section 254 of the Act are met without waste, fraud, or abuse.

40. In the Public Notice, the Commission seeks comment on several issues and measures that may apply to small entities in a unique fashion. Small entities may be more likely to seek relief from their obligations to serve the CAM-estimated number of funded locations. Small entities may also be more likely to challenge participants' requests for relief. The Bureau will consider comments from small entities as to whether a different standard should apply.

41. *Permit but Disclose Ex Parte Contact*. For the purposes of the Commission's *ex parte* rules, information filed in this proceeding will be treated as initiating a permit-but-disclose proceeding under the Commission's rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days

after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### IV. Filing Requirements

42. *Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), <http://fjallfoss.fcc.gov/ecfs2/>.

43. *Paper Filings*. Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings submitted to the FCC must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *Hand or Messenger Delivery*. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC

Headquarters at 445 12th Street SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m.

- **Commercial Overnight Mail.**

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- **U.S. Postal Service First-Class, Express, and Priority Mail.** U.S. Postal Service mail must be addressed to 445 12th Street SW, Washington DC 20554.

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

45. For additional information on this proceeding, contact Nissa Laughner at (202) 418-1358 or [Nissa.Laughner@fcc.gov](mailto:Nissa.Laughner@fcc.gov), of the Wireline Competition Bureau, Telecommunications Access Policy Division.

Federal Communications Commission.

**Ryan Palmer,**

Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 180702603-8603-01]

RIN 0648-BH98

#### Advance Notice of Proposed Rulemaking; Request for Information

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** NMFS hereby publishes an advance notice of proposed rulemaking to solicit comments on modifying the Atlantic Large Whale Take Reduction Plan's Massachusetts Trap/Pot Restricted Area and the Great South Channel Trap/Pot Restricted Area to allow trap/pot fishing that does not use vertical buoy lines (referred to as buoy-lineless or ropeless gear) prior to gear

retrieval. NMFS is requesting comments on this possible action including whether opening these areas that are currently closed to trap/pot fishing would provide an economic benefit or incentive for buoy-lineless fishing development and to assess interest from industry for buoy-lineless fishing in these areas.

**DATES:** Information related to this document must be received by close of business on October 29, 2018.

**ADDRESSES:** You may submit comments by any of the following methods:

**Electronic Submission:** Submit all federal public comments via the Federal e-rulemaking Portal.

1. Go to [www.regulations.gov](http://www.regulations.gov) / #!docketDetail;D=[www.regulations.gov](http://www.regulations.gov) / #!docketDetail;D=NOAA-NMFS-2018-0082.

2. Click the "Comment Now!" icon, complete the required fields.

3. Enter or attach your comments.

-OR-

**Mail:** Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or other sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:**

Allison Rosner NMFS Protected Resources Division, Greater Atlantic Region, 978-282-8462, [allison.rosner@noaa.gov](mailto:allison.rosner@noaa.gov) or Kristy Long, NMFS Office of Protected Resources, 301-427-8402, [kristy.long@noaa.gov](mailto:kristy.long@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Large whale entanglements resulting in mortalities and serious injuries still occur at levels that, for North Atlantic right whales, exceed the allowable levels established by the Marine Mammal Protection Act (MMPA). Under the MMPA, NMFS is required to reduce the mortality and serious injury to three strategic large whale stocks—the Western Stock of North Atlantic right

whales (*Eubalaena glacialis*), the Gulf of Maine stock of humpback whales (*Megaptera novaeangliae*), and the Western North Atlantic stock of fin whales (*Balaenoptera physalus*)—incidentally taken in commercial fisheries to below the potential biological removal level for each stock.

Currently the Atlantic Large Whale Take Reduction Plan (Plan) has two seasonal trap/pot closures: Massachusetts Restricted Area (50 CFR 229.32(c)(3)) and the Great South Channel Trap/Pot Closure (50 CFR 229.32(c)(4)). Massachusetts Restricted Area prohibits fishing with, setting, or possessing trap/pot gear in this area unless stowed in accordance with § 229.2 from February 1 to April 30. Great South Channel Trap/Pot Closure prohibits fishing with, setting, or possessing trap/pot gear in this area unless stowed in accordance with § 229.2 from April 1 through June 30.

In 2003, the Atlantic Large Whale Take Reduction Team (Team) agreed to manage entanglement risk by first reducing the risk associated with groundlines and then reducing the risk associated with vertical lines in commercial trap/pot and gillnet gear. Risk reduction of groundlines was addressed in October 2007 with the implementation of the sinking groundline requirement for all fisheries throughout the east coast (72 FR 57104, October 5, 2007). In 2009, at the request of the Team, NMFS also investigated the feasibility of opening a buoy-lineless (or ropeless) fishing gear testing site in the Great South Channel trap/pot and gillnet closure area. At the time, the Agency determined that technological and economic incentives were not sufficient for this to be successful, and that other management actions to reduce entanglement risks caused by vertical lines should be prioritized.

In 2014, the Plan was amended (79 FR 36586, June 27, 2014) to address large whale entanglement risks associated with vertical line (or buoy lines) from commercial trap/pot fisheries. This amendment included gear modifications, gear setting requirements, an expanded seasonal trap/pot closure (Massachusetts Restricted Area) and gear marking for both trap/pot and gillnet fisheries. The original Massachusetts Restricted Area was a seasonal closure from January 1 through April 30 for all trap/pot fisheries. In a subsequent Plan amendment, the boundary for the Massachusetts Restricted Area was expanded by 900 square miles (2.59 square kilometers), and the start date changed to February 1 (79 FR 73848, December 12, 2014).