

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

In the Matters of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

ORDER

Adopted: July 18, 2012

Released: July 18, 2012

By the Acting Chief, Wireline Competition Bureau

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) clarifies certain rules relating to Phase I of the Connect America Fund (CAF) in order to assist the price cap carriers that shortly will be making their election to accept additional funding to spur broadband deployment.¹ Commission staff have received informal inquiries from price cap companies on certain implementation aspects of the rules governing CAF Phase I. We also make a correction to one of the Commission's rules to fix a clerical error relating to the support for carriers serving remote areas of Alaska.

¹ In the *USF/ICC Transformation Order*, the Commission delegated to the Bureau the authority to revise and clarify rules as necessary to ensure that the reforms adopted in the *Order* are properly reflected in the rules. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, 18149, para. 1404 (2011) (*USF/ICC Transformation Order* or *Order*), *pets. for review pending sub nom. In re: FCC*, No. 11-9900 (10th Cir. filed Dec. 18, 2011); 47 C.F.R. §§ 0.91, 0.201(d), 0.291. See also *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 12-147 (rel. Feb. 3, 2012); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 12-298 (rel. Feb. 27, 2012).

II. BACKGROUND

2. In the *USF/ICC Transformation Order*, the Commission adopted a framework for the Connect America Fund to provide support in the territories of price cap carriers and their rate-of-return affiliates based on a combination of competitive bidding and a forward-looking cost model. The Commission observed that developing a new cost model and bidding mechanism could be expected to take some time. To spur broadband deployment even as those mechanisms are being developed, the Commission established Phase I of the CAF, a transition mechanism from the old high-cost support mechanisms for price cap carriers to the new CAF. In Phase I, the Commission froze current high-cost support for price cap carriers and their affiliates, and, in addition, committed up to \$300 million in incremental support to promote broadband deployment.² The \$300 million in incremental support was allocated among price cap carriers using a formula to estimate wire center costs that was based on the prior high-cost proxy model.³

3. Participation in the CAF Phase I incremental support program is optional. But carriers that accept funding are required to deploy broadband to a number of locations, currently unserved by fixed broadband, equal to the amount of incremental support the carrier accepts divided by \$775.⁴ Each carrier accepting funding must identify the areas, by wire center and census block, in which it intends to deploy broadband to meet its obligation, when it files its notice of acceptance.⁵ Carriers are required to complete deployment to no fewer than two-thirds of the required number of locations within two years and all required locations within three years, and they must certify that they have done so as part of their annual certifications under section 54.313 of the Commission's rules.⁶ The Commission also provided that "[c]arriers failing to meet a deployment milestone will be required to return the incremental support distributed in connection with that deployment obligation and will be potentially subject to other penalties, including additional forfeitures, as the Commission deems appropriate."⁷ However, the Commission continued, "[i]f a carrier fails to meet the two-thirds deployment milestone within two years and returns the incremental support provided, and then meets its full deployment obligation associated with that support by the third year, it will be eligible to have support it returned restored to it."⁸

III. DISCUSSION

4. First, we clarify how to calculate the amount of support a carrier must return for failing to meet its deployment requirements. Specifically, if a carrier fails to meet its deployment obligations, it will be required to return to the Commission an amount equal to \$775 multiplied by the number of locations to which the carrier was required to deploy to but did not, but a carrier will not be required to "pay twice" for any failure to meet a requirement. For example, if a carrier accepted \$6,975,000 and committed to deploying to 9,000 locations over three years, but only deployed to 5,800 by the end of two years, rather than the 6,000 required at that milestone, the carrier would be required to return \$155,000 of its incremental support (200 locations times \$775). Similarly, a carrier that accepted the same amount and deployed to all 6,000 locations by the second year but deployed to only 8,900 by the end of the third year would be required to return \$77,500 (100 locations times \$775). However, if the same carrier

² See *USF/ICC Transformation Order*, 26 FCC Rcd at 17715, para. 133.

³ See *id.* See also *Wireline Competition Bureau Announces Support Amounts for Connect America Fund Phase One Incremental Support*, WC Docket Nos. 10-90, 05-337, DA 12-639 (rel. Apr. 25, 2012).

⁴ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17715, para. 133.

⁵ See *id.* at 17720, para. 146; 47 C.F.R. §§ 54.312(b)(3), 54.313(b).

⁶ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17721, para. 147; 47 C.F.R. § 54.312(b)(4).

⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17721, para. 147.

⁸ *Id.* at 17721-22, para. 147.

deployed to 5,800 of its required 6,000 locations by the second year, returned the \$155,000 required, and then continued its deployment, reaching 8,900 by the end of the third year, it would have \$77,500 of its returned support restored. We note that this discussion does not address any additional penalties that the Commission may choose to impose on any carrier that fails to meet its deployment obligation, as stated in the *Order*.⁹

5. Second, we clarify that when a carrier files its notice of acceptance of funding, identifying the wire centers and census blocks in which it intends to deploy, it is not binding itself to deploy only in those areas, nor is it committing to deploy to every unserved location in those areas. We clarify that carriers are expected to make a good faith effort to identify where they will deploy when they file their notices of acceptance. We observe, in this regard, that there are a number of practical obstacles that may make it difficult for carriers to commit irrevocably to a particular deployment plan by July 24th. For example, carriers may not have perfect information now about the number of locations in every potential area, the number of locations in an area may change over time, and the aggressive schedule for identifying intended buildout locations may make it difficult for carriers to gain complete information about potential deployments prior to filing their notices of acceptance. Accordingly, we clarify that carriers may, in satisfaction of their deployment requirement, deploy to eligible locations not identified in their notices of acceptance, but will be required to identify subsequently where deployment actually occurred. Similarly, if a carrier finds that deploying to an area it intended to deploy to would be impractical, it will not be subject to penalties on account of its failure to deploy broadband to that particular area.

6. Third, we clarify that the certification associated with carriers' two- and three-year deployment milestones, which carriers must include as part of their annual filings under section 54.313(b) of the Commission's rules,¹⁰ must specify the number of locations in a census block-wire center combination to which they have actually built. Carriers must identify the precise number of locations so that appropriate adjustments, if any, can be made to support previously provided, if a carrier fails to meet its deployment obligation. To facilitate the ability of USAC and the Commission to validate that carriers have, in fact, met their deployment obligations, carriers must be prepared, upon request, to provide sufficient information regarding the location of actual deployment to confirm the availability of service at that location.

7. Fourth, we clarify that the certifications each carrier makes when it accepts incremental support—that the locations to be deployed to are shown on the National Broadband Map as unserved by fixed broadband by any provider other than the certifying entity itself or an affiliate; that, to the best of the carrier's knowledge, the locations are, in fact, unserved by fixed broadband; that the carrier's capital improvement plan did not already include plans to complete broadband deployment within the next three years to the locations to be counted to satisfy the deployment obligation; and that incremental support will not be used to satisfy any merger commitment or similar regulatory obligation¹¹—are certifications that apply to all locations that in fact the carrier extends broadband to, using CAF Phase I incremental support. That is, if a carrier finds it necessary to deploy to locations other than the locations identified in its initial acceptance filing, those other locations may not be in areas, for example, that were shown on the National Broadband Map, at the time of acceptance, as served.

8. Fifth, we clarify that when a carrier certifies that the locations to which it will deploy are shown as unserved by fixed broadband on the "current" version of the National Broadband Map, the "current" version of the National Broadband Map is the version that was publicly available on the

⁹ See *id.* at 17720, para. 147.

¹⁰ See 47 C.F.R. § 54.313(b).

¹¹ See 47 C.F.R. § 54.312(b)(3).

National Broadband Map website on the date eligible support amounts were announced.¹² The Commission intended for carriers to have 90 days to determine how much incremental support they would accept and which wire centers and census blocks they would deploy to in order to meet their CAF Phase I commitments.¹³ To the extent the National Broadband Map data is updated during the 90-day period in which carriers are evaluating how much incremental support they will accept, that could leave carriers with less time to evaluate the updated version of the map. Potentially altering CAF Phase I incremental support deployment plans before the deadline for them to accept funding would be unreasonable and contrary to the Commission's framework for CAF Phase I funding, and we clarify the requirement to ensure that carriers have a full 90 days to make their CAF I plans.

9. Sixth, we further clarify that the term "fixed broadband" for the purposes of CAF Phase I includes any technology identified on the then-current version of the National Broadband map that is not identified as a mobile technology or a satellite-based technology. In this regard, we observe that the technologies reported on the National Broadband Map at the time the *Order* was issued varied from the technologies listed on the Broadband Map currently.¹⁴ The Commission in the *Order* distinguished fixed terrestrial broadband technologies from mobile and satellite broadband technologies, determining that only fixed terrestrial broadband technologies are relevant to the determination of whether an area is served for the purposes of CAF Phase I; the clarification we provide here reflects this distinction.¹⁵

10. Finally, we correct section 54.307(e)(5) of the Commission's rules.¹⁶ Paragraph 180 of the first erratum to the *USF/ICC Transformation Order* corrected section 54.307(e)(5) to replace "described in paragraph (e)(2)(iv) of this section" with "described in paragraph (e)(2)(iii) of this section." The text to be replaced appeared twice in section 54.307(e)(5), but, through a clerical error, only the second instance of that text in the rule was corrected. We now correct the rule to replace the remaining instance of that text.

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act

11. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. 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).

¹² See *USF/ICC Transformation Order*, 26 FCC Rcd at 17720-21, para. 146. See also 47 C.F.R. § 54.312(b)(3) (requiring a carrier accepting CAF Phase I incremental support to certify that locations the carrier intends to deploy to are shown as unserved by fixed broadband on the "then-current" version of the National Broadband Map).

¹³ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17720-21, para. 146 (within 90 days of being informed of the amount of incremental support it is eligible to receive, each carrier must provide notice . . . identifying the amount of support it wishes to accept and the areas by wire center and census block in which the carrier intends to deploy broadband). See also 47 C.F.R. § 54.312(b)(3).

¹⁴ Compare *USF/ICC Transformation Order*, 26 FCC Rcd at 17720-21 n.231 with National Broadband Map: Type of Technology Available, available at <http://www.broadbandmap.gov/technology>. We note that the current National Broadband Map does not report satellite coverage.

¹⁵ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17720-21 n.231.

¹⁶ See 47 C.F.R. § 54.307(e)(5).

B. Final Regulatory Flexibility Act Certification

12. The Regulatory Flexibility Act of 1980, as amended (RFA),¹⁷ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.”¹⁸ The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²⁰ 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 Small Business Administration (SBA).²¹

13. This Order clarifies, but does not otherwise modify, the *USF/ICC Transformation Order*. These clarifications do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to *USF/ICC Transformation Order*. Therefore, we certify that the requirements of this Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order including a copy of this final certification in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.²² In addition, the Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register.²³

C. Congressional Review Act

14. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.²⁴

¹⁷ The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

¹⁸ 5 U.S.C. § 605(b).

¹⁹ 5 U.S.C. § 601(6).

²⁰ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 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.”

²¹ Small Business Act, 15 U.S.C. § 632.

²² *See* 5 U.S.C. § 801(a)(1)(A).

²³ *See* 5 U.S.C. § 605(b).

²⁴ *See* 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and pursuant to sections 0.91, 0.201(d), 0.291, 1.3, and 1.427 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.201(d), 0.291, 1.3, 1.427 and pursuant to the delegation of authority in paragraph 1404 of FCC 11-161 (rel. Nov. 18, 2011), that this Order IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Acting Chief
Wireline Competition Bureau

**APPENDIX
Final Rules**

For the reasons discussed in the Order, 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), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.307(e)(5) to read as follows:

* * * * *

(5) Implementation of Mobility Fund Phase II Required. In the event that the implementation of Mobility Fund Phase II has not occurred by June 30, 2014, competitive eligible telecommunications carriers will continue to receive support at the level described in paragraph (e)(2)(iii) of this section until Mobility Fund Phase II is implemented. In the event that Mobility Fund Phase II for Tribal lands is not implemented by June 30, 2014, competitive eligible telecommunications carriers serving Tribal lands shall continue to receive support at the level described in paragraph (e)(2)(iii) of this section until Mobility Fund Phase II for Tribal lands is implemented, except that competitive eligible telecommunications carriers serving remote areas in Alaska and subject to paragraph (e)(3) of this section shall continue to receive support at the level described in paragraph (e)(3)(v) of this section.

* * * * *