

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

In the Matter 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: October 30, 2013

Released: October 30, 2013

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) addresses three petitions for clarification or waiver of the Commission's rules concerning obligations of recipients of Connect America Phase I frozen support and transitional intercarrier compensation (ICC)-replacement Connect America Fund (CAF ICC) support, filed by the United States Telecom Association (USTelecom), FairPoint Communications, Inc. (FairPoint), and Alaska Communications Systems (ACS) (collectively, Phase I Petitioners).¹ The Bureau clarifies certain aspects of these obligations of carriers subject to price cap regulation (price cap carriers).²

¹ See Petition for Clarification and Reconsideration or, in the Alternative, for Waiver of CTIA – The Wireless Association and the United States Telecom Association, CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135, 10-90; WT Docket No. 10-208 (filed June 25, 2012) (CTIA/USTelecom Petition) (CTIA did not join this section of the petition); FairPoint Communications, Inc. Petition for Waiver of Section 54.313(c) of the Commission's Rules, WC Docket Nos. 10-90 and 05-337 (filed Feb. 8, 2013) (FairPoint Petition); Alaska Communications Systems Petition for Waiver, WC Docket Nos. 10-90 and 05-337 (filed Apr. 9, 2013) (ACS Petition); see also *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

² See 47 C.F.R. § 54.313(c), (d); see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17723, 17855, 17994-95, paras. 150, 591, 918.

II. BACKGROUND

2. In the *USF/ICC Transformation Order*, the Commission froze support received in 2011 by price cap carriers and their rate-of-return affiliates under all existing mechanisms—specifically, high-cost loop support (HCLS), Safety Net Additive support, safety valve support, local switching support (LSS), interstate common line support (ICLS),³ high-cost model support (HCMS), and interstate access support (IAS)—which it then called “frozen high-cost support.”⁴ In doing so, the Commission eliminated the IAS mechanism for price cap companies.⁵ The Commission also imposed new broadband obligations on eligible telecommunications carriers (ETCs) receiving frozen high-cost support, to begin the process of transitioning federal high-cost support to supporting modern communications networks capable of supporting voice and broadband.⁶ In 2013, all carriers receiving frozen high-cost support must use at least one-third of that support “to build and operate broadband-capable networks used to offer the provider’s own retail broadband service in areas substantially unserved by an unsubsidized competitor,” and certify to that effect in their annual reports due July 1, 2014.⁷ In subsequent years, increasing amounts of frozen support must be used for the same purposes.⁸

3. IAS was a high-cost program that historically supported a portion of the local loop, the facility to the end user that delivers both interstate and intrastate services. It reduced the amount of revenues that price cap carriers needed to recover from end users and other carriers to meet their allowable interstate revenues. The Commission created IAS as part of the May 2000 *CALLS Order*, a five-year transitional interstate access and universal service reform plan for price cap carriers.⁹ The *CALLS Order* lowered interstate common line access rates and replaced the reduced revenues with increased subscriber line charges (SLCs) and an explicit portable high-cost support mechanism, IAS.¹⁰ The Commission initially sized IAS in 2000 at \$650 million annually, to offset the reductions in the interstate access charges of price cap carriers.¹¹ In the 2008 *Interim Cap Order*, the Commission capped

³ This includes frozen ICLS provided to those carriers that converted to price cap regulation after the implementation of IAS. See, e.g., *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, Order, 23 FCC Rcd 5294, 5303, para. 21 (2008) (converting Windstream’s cost company, rate-of-return regulated study areas to price cap regulation and freezing its per-line ICLS levels going forward).

⁴ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17672, para. 18 n.16, 17712, para. 128 & n.200, 17715, para. 133, 17858, para. 605 (eliminating IAS reporting), and 17862, para. 614 (eliminating IAS certification).

⁵ *Id.* at 17712, para. 128 & n.200.

⁶ *Id.* at 17722-23, paras. 149-51.

⁷ 47 C.F.R. § 54.313(c)(2); see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17723, para. 150.

⁸ 47 C.F.R. § 54.313(c)(2), (3).

⁹ *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order; *Low-Volume Long Distance Users*, CC Docket No. 99-249, Report and Order; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962, 12964, para. 1 (2000) (*CALLS Order*).

¹⁰ *Id.* at 12974-75, para. 30.

¹¹ *Id.* at 13046, para. 202; see *Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313, 327-28 (5th Cir. 2001). The Commission found \$650 million to be a reasonable amount that would provide sufficient, but not excessive, support. *CALLS Order*, 15 FCC Rcd at 13046, para. 202. It observed that a range of funding levels might be deemed “sufficient” for the purposes of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (amending the Communications Act of 1934 (the Act)), and that “identifying an amount of implicit support in our interstate access charge system is an imprecise exercise.” *Id.* at 13046, para. 201 (“The various implicit support flows (e.g., business to residential, high-volume to low-volume, and geographic rate averaging) are not easily severable and quantifiable. Moreover, the competitive pricing pressures present during this transitional period

(continued...)

IAS for incumbent local exchange carriers (LECs) at the amount incumbent LECs were eligible to receive in March 2008, indexed to line growth or loss by incumbent LECs.¹² In the *USF Reform NOI/NPRM*,¹³ and again in the *USF/ICC Transformation NPRM*,¹⁴ the Commission sought comment on eliminating IAS.

4. The Phase I Petitioners initially argue in their respective petitions that ETCs should not be required to use their Connect America Phase I frozen support to support the deployment of modern networks capable of providing voice and broadband, nor should ETCs have to certify to that effect.¹⁵ Specifically, the Phase I Petitioners argue that because IAS was traditionally used in the calculation of interstate access charges, the Commission cannot also direct companies to spend IAS on building and operating broadband networks in areas not served by an unsubsidized competitor.¹⁶ Subsequently, the Phase I Petitioners urge the Commission to clarify that carriers may certify to the use of frozen support on a holding company level.¹⁷

5. In its petition, FairPoint also seeks more general relief from frozen support service obligations for itself by arguing that the company is unique and different from other price cap carriers.¹⁸ FairPoint points out that it operates both price cap and rate-of-return companies under the Connect America regime, and that it is unique because it is the only company “whose cost-based rate-of-return ILECs [are] treated as price cap carriers under the CAF rules,” resulting in fiscal harm.¹⁹

6. Similarly, in its petition, ACS seeks a waiver of section 54.313(c) for itself in either of two ways: first, ACS seeks a waiver to exclude from the Connect America Phase I obligations those portions of its frozen high-cost support derived from ICLS and LSS, and to allow ACS flexibility to spend the remaining portion of frozen high-cost loop support, HCLS, in any of the service areas of the ACS incumbent LECs, provided the support is used to build and operate broadband-capable networks in areas substantially unserved by an unsubsidized competitor.²⁰ In the alternative, ACS requests waiver of

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between monopoly and competition present additional complexities in identifying a specific amount of implicit support.”).

¹² *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008) (*Interim Cap Order*). The Commission separately capped IAS for competitive ETCs at the amount they were eligible to receive in March 2008. *Id.*

¹³ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657, 6680-81, paras. 57-58 (2010) (*USF Reform NOI/NPRM*).

¹⁴ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4633-38, paras. 228-40 (2011) (*USF/ICC Transformation NPRM*).

¹⁵ See CTIA/USTelecom Petition at 18-19; FairPoint Petition at 7, 10-14; ACS Petition at 2, 6-10, 14. See also *Connect America Fund et al.*, WC Docket No. 10-90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622 (2012); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013).

¹⁶ CTIA/USTelecom Petition at 18-19; FairPoint Petition at 5; ACS Petition at 6-7.

¹⁷ ACS Petition at 11; Letter from David Cohen, USTelecom, to Marlene H. Dortch, FCC, WC Docket No. 10-90, at 2-3 (filed Jan. 31, 2013); Letter from Karen Brinkmann, Counsel to FairPoint Communication, Inc., to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al., at 2 (filed Aug. 14, 2013). See also Letter from Jeffrey S. Lanning, CenturyLink, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Sept. 16, 2013) (CenturyLink Sept. 16, 2013 Ex Parte); Letter from Malena F. Barzilai, Windstream Corporation, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Sept. 24, 2013).

¹⁸ FairPoint Petition at 5-7.

¹⁹ *Id.* at 6-7.

²⁰ ACS Petition at 11-14.

the requirement that frozen high-cost support be demonstrably used in areas substantially unserved by an unsubsidized competitor.²¹

7. In the *USF/ICC Transformation Order*, the Commission also adopted a recovery mechanism called CAF ICC support. CAF ICC support allows LECs to recover a portion of intercarrier compensation switched access revenues reduced as part of intercarrier compensation reforms.²² Section 54.313(d) requires each price cap carrier “receiving high-cost support to offset reductions in access charges [to] provide a certification that the support received pursuant to § 54.304 in the prior calendar year was used to build and operate broadband-capable networks used to offer provider's own retail service in areas substantially unserved by an unsubsidized competitor.”²³

III. DISCUSSION

8. We clarify certain aspects of the Connect America Phase I and CAF ICC obligations, as described below. We also take this opportunity to clarify the effect of frozen IAS support on SLC levels after the *USF/ICC Transformation Order*.

A. Frozen Support Obligations

9. During Connect America Phase I, each price cap carrier receives the same total dollar amount of frozen high-cost universal service support in a given study area that it had received in 2011 under several separate high-cost support mechanisms. However, a percentage of the amount it previously had been receiving through those high-cost support mechanisms, including from IAS, must be used consistent with the Commission's overarching policy objectives to transition high-cost funding to expressly support voice and broadband-capable networks, and to eliminate support in areas served by an unsubsidized competitor. The Commission expressly adopted these interim measures as part of a phased transition to full implementation of Phase II of the Connect America Fund.²⁴

10. Under the Act, universal service support is intended for the provision, maintenance, and upgrading of facilities and services.²⁵ Historically, ETCs have used universal service support to recover costs previously incurred for network investment and ongoing operation and maintenance of those facilities. Moreover, as the Commission recognized in the *USF/ICC Transformation Order*, under the long-standing “no barriers” policy, it has been permissible for more than a decade to use universal service support for mixed-use facilities that can deliver both voice and broadband services, such as the extension of fiber closer to end-user premises or annual maintenance of such fiber.²⁶ Therefore, consistent with long-standing Commission policy, we take this opportunity to restate that carriers may use their frozen high-cost support either to recover the costs of past network upgrades to extend broadband-capable networks in areas substantially unserved by an unsubsidized competitor, or to maintain and operate existing networks in such areas, or a combination of the two. Price cap carriers are not required to use one-third of their frozen support for new capital investment occurring in 2013. The Commission recognized that there are significant ongoing costs for carriers maintaining a dual-use network, and therefore there is significant value in permitting carriers to use frozen high-cost support to cover the operating expenditures necessary to maintain such networks that have been constructed prior to the adoption of the *USF/ICC Transformation Order*, rather than just utilizing frozen high-cost support solely to cover the operating expenditures necessary to maintain networks that are newly built.

²¹ *Id.* at 2.

²² *USF/ICC Transformation Order*, 26 FCC Rcd at 17956, para 847.

²³ 47 C.F.R. § 54.313(d).

²⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17723, para. 151.

²⁵ 47 U.S.C. § 254(e).

²⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17685-87, paras. 64-65.

11. We also clarify that the obligation to use frozen high-cost support for broadband-capable networks in areas substantially unserved by an unsubsidized competitor applies to carriers at the holding company level.²⁷ The Commission's overarching policy objective for its interim Phase I reforms was to "begin the process of transitioning all federal high-cost support to price cap carriers to supporting modern communications networks capable of supporting voice and broadband in areas without an unsubsidized competitor."²⁸ The Commission recognized that "the simplified interim mechanism is imperfect in some respects," but its ultimate goal was to spur "immediate and material broadband deployment pending implementation of CAF competitive bidding- and model-based support for price cap areas."²⁹ Neither the text of the *USF/ICC Transformation Order* nor the codified rules apply those obligations on a study-area basis. Because support was frozen on a study-area basis for both price cap carriers and their rate-of-return affiliates,³⁰ and annual reports are filed on a study-area basis, however, there may be some confusion regarding how carriers filing those annual reports should make the necessary certification regarding compliance with their obligations. We clarify that: (1) price cap carriers must continue to use all frozen high-cost support within the study area for which it is currently provided,³¹ and (2) price cap carriers must be prepared to produce documentation upon request, in the course of an audit or other inquiry, identifying the states and study areas where they are fulfilling the section 54.313(c) broadband obligation, and associated dollar amounts.

12. We expect that the clarifications adopted herein will alleviate the concerns raised by ACS and FairPoint in their individual petitions, and we therefore deny those petitions. We conclude it would be premature to grant any additional relief to either petitioner without knowing the extent to which they may be unable to meet their obligations as clarified herein. We remind carriers that the Commission has established a process for carriers to pursue should they find themselves unable to meet these requirements.³² Moreover, to the extent any individual carrier finds it is unable to make the necessary certifications at the holding company level, it remains free to relinquish whatever support that it is unable to use consistent with the obligation to direct a specific percentage towards broadband-capable networks in areas substantially unserved by an unsubsidized competitor.³³

B. CAF ICC Support Obligations

13. We also recognize that, because Eligible Recovery is calculated at the study area level,³⁴ parties have sought guidance about whether the required certification concerning the use of CAF ICC support for broadband-capable networks in areas substantially unserved by an unsubsidized competitor is

²⁷ 47 C.F.R. § 54.313(c).

²⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17722, para. 149.

²⁹ *Id.* at 17723, para. 151.

³⁰ *Id.* at 17715, para. 133.

³¹ In particular, a given study area receives the same amount of support, and the price cap carrier remains obligated to use that support within the study area pending the full transition to Phase II, unless the carrier returns to the federal universal service fund (Fund) the portion of support it cannot use consistent with section 54.313(c).

³² In the *USF/ICC Transformation Order*, the Commission noted that if carriers continue to believe they cannot meet their obligations with the revenues they receive under the Connect America Fund and intercarrier compensation reform, they may avail themselves of the total cost and earnings review process. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17724, 17996-18002, paras. 152, 924-32.

³³ To provide an illustrative example, if a holding company receives \$30 million in frozen support in 2013 but can only certify that \$5 million satisfies the 2013 section 54.313(c) obligation (to use at least one-third of such support for broadband-capable networks), it would relinquish \$5 million of its support. We will work with the Universal Service Administrative Company to implement a process for a carrier that relinquishes any Phase I frozen high-cost support.

³⁴ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17971-77, paras. 879-90.

to be made at the study area level or at the holding company level.³⁵ We clarify that the certification required by section 54.313(d) concerning use of CAF ICC support is to be made at the holding company level. Similar to the outcome of our clarification of the section 54.313(c) certification, allowing price cap carriers to certify compliance with section 54.313(d) by relying on expenditures on broadband-capable networks at the holding company level allows us to make progress on our reform goal of transitioning high-cost support to broadband-capable networks.

14. We clarify that price cap carriers must be prepared to produce documentation upon request, in the course of an audit or other inquiry, identifying the states and study areas where they are fulfilling the section 54.313(d) broadband obligation, and associated dollar amounts. A carrier may also choose to return to the Fund the portion of funding that it was unable to use consistent with the section 54.313(d) broadband spending obligations.

C. Effect of Frozen IAS on SLCs

15. In this section, we review the Commission's findings in the *USF/ICC Transformation Order* in connection with IAS and clarify how the Commission's reforms are to be implemented. In the *USF/ICC Transformation Order*, the Commission recognized that "[h]istorically, IAS was intended to replace allowable common line revenues that otherwise are not recovered through SLCs."³⁶ It eliminated IAS as a stand-alone universal service support mechanism.³⁷ At the same time, the Commission recognized that the amount of support previously received under the different individual funding mechanisms it eliminated were still necessary for other calculations. The Commission consequently made clear that the amount of IAS support a carrier had received in calendar year 2011 would be imputed to that ETC for purposes of calculating its interstate rates in subsequent years, prior to implementation of Connect America Phase II.³⁸ A carrier's interstate rates during Connect America Phase I will still be calculated as if it were receiving the same amount of IAS it had received in 2011. The Commission therefore implicitly determined that a carrier may not raise its SLCs or any other rate elements based on the obligations that attached to the frozen high-cost support the carrier receives during the Connect America Phase I transition.³⁹ The Commission also capped the Presubscribed Interexchange Carrier Charges (PICC) and other interstate switched access rates.⁴⁰

16. For price cap carriers, as line counts changed after the 2008 IAS freeze, the per-line IAS amount changed as well, thereby affecting SLC calculations. The reforms adopted in the *USF/ICC Transformation Order*, including capping the PICC, ended the linkage between IAS and common line revenue recovery.⁴¹ The order did not clearly state whether the IAS freeze also froze the 2011 per-line amount for purposes of calculating SLCs. Filings in this proceeding indicate a misunderstanding as to whether the *USF/ICC Transformation Order* froze the per-line IAS amount at the 2011 levels.⁴² We

³⁵ See 47 C.F.R. § 54.313(d); see also Letter from Marlena F. Barzilai, Windstream Corporation, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (dated Feb. 5, 2013); CenturyLink Sept. 16, 2013 Ex Parte.

³⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17723, para. 152.

³⁷ *Id.* at 17712, para. 128 n.200.

³⁸ *Id.* at 17724, para. 152.

³⁹ See *id.*

⁴⁰ *Id.* at 17942, para. 818 n.1547.

⁴¹ See *id.* at 17723, para. 152.

⁴² See, e.g., Letter from Maggie McCreedy, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 10-90, CC Docket No. 01-92, at 1 (filed Feb. 1, 2013); Letter from Mary L. Henze, AT&T, to Marlene Dortch, FCC, WC Docket No. 10-90, CC Docket No. 01-92, at 1 (filed Feb. 4, 2013); Letter from Jonathan Banks, USTelecom, to Marlene Dortch, FCC, WC Docket No. 10-90, CC Docket No. 01-92, at 1 (filed Feb. 27, 2013); Letter from Jonathan Banks, USTelecom, to Marlene H. Dortch, FCC, WC Docket No. 10-90 at 1 & Attach. (filed Mar. 14, 2013); Letter from Jonathan Banks, USTelecom, to Marlene Dortch, FCC, WC Docket No. 10-90, CC Docket No.

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clarify here that it did. This reading is consistent with the study area freeze of total IAS at 2011 levels. In addition, this reading is most consistent with the expectation in the *USF/ICC Transformation Order* that SLC rates not be increased.⁴³ Accordingly, we clarify that the IAS amount for which each carrier was eligible in 2011 should be implemented as a frozen per-line amount in calculating SLCs.

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4, 5, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 155, 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the petitions of the United States Telecom Association, FairPoint Communications, Inc., and Alaska Communications Systems, ARE GRANTED IN PART, to the extent described herein, and DENIED IN PART, to the extent described herein.

18. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau

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01-92, at 1 & Attach. (filed Mar. 28, 2013); Letter from Jonathan Banks, USTelecom, to Marlene Dortch, FCC, WC Docket No. 10-90, at 1 (filed May 16, 2013). *See also* Letter from Geoffrey G. Why, Commonwealth of Massachusetts Department of Telecommunications and Cable, to Marlene H. Dortch, FCC, WC Docket Nos. 13-76, 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 2 (filed June 14, 2013) (urging the Commission to, among other things, prohibit further SLC increases by any company not receiving CAF support for broadband, and implement an immediate freeze of all SLCs “until the FCC revisits the appropriateness of those charges”).

⁴³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17724, para. 152.