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Small Entity Compliance Guide

Eligible Telecommunications Carrier Annual Reporting Requirements for Recipients of High-Cost and/or Low Income Universal Service Support

FCC 11-161

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47 C.F.R. §§ 54.313, 54.314, 54.320, 54.422

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above referenced FCC

rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties, or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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**Eligible Telecommunications Carrier Annual Reporting, Certification, and
Recordkeeping Requirements for Recipients of High-Cost and/or Low Income
Universal Service Support**

I. Objectives of the Proceeding

In the *USF/ICC Transformation Order*, the FCC adopted several reforms updating annual reporting requirements for eligible telecommunications carriers (ETCs) that receive high-cost support.¹ Specifically, the Commission extended reporting requirements for voice service to all ETCs and adopted new and modified reporting, certification, and recordkeeping requirements to reflect new broadband obligations.² In the *Third Order on Reconsideration*, the *Fifth Order on Reconsideration*, the *April 2014 Connect America Order*, and the *December 2014 Connect America Order*, the FCC made revisions to these requirements.³ Similarly, in the *Lifeline Reform Order*, the FCC adopted reporting requirements for ETCs that receive low-income support to increase accountability in the program.⁴

II. Compliance

A. Overview

ETCs that receive federal high-cost universal service support (high-cost support) are required to provide the data identified in 47 C.F.R. § 54.313.⁵ Such ETCs must also annually make a certification regarding the use of high-cost support pursuant to 47 C.F.R. § 54.314,⁶ comply with a 10-year recordkeeping requirement, and cooperate with random compliance audits and other investigations.⁷ Lifeline-only ETCs that receive only low-income support through the federal Lifeline program (low-income support) are required

¹ *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, 17849, para. 569 (2011) (*USF/ICC Transformation Order*) *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

² *Id.* at 17852, 17860, paras. 579, 608.

³ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622, 5623-31, paras. 3-24 (2012); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549, 14550-56, paras. 4-17 (2012); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7069, para. 57 (2014); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15686-88, 15690-93, paras. 119-23, 129-38 (2014). The Wireline Competition Bureau also clarified the reporting rules in several orders. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 27 FCC Rcd. 605 (Wireline Comp. Bur. 2012); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 28 FCC Rcd 7227 (Wireline Comp. Bur. 2013).

⁴ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6819-20, paras. 389-90 (2012) (*Lifeline Reform Order*).

⁵ See *USF/ICC Transformation Order*, 26 FCC Rcd 17663 (adopting section 54.313 of the Commission's rules).

⁶ ETCs that are designated by states must have the relevant states file this certification on their behalf. 47 C.F.R. § 54.314(a).

⁷ 47 C.F.R. § 54.320; *USF/ICC Transformation Order*, 26 FCC Rcd 17663, 17864, 66, paras. 619-21, 629.

to provide the data identified in 47 C.F.R. § 54.422.⁸ ETCs that receive both high-cost support and low-income support should follow the high-cost and low-income support requirements. ETCs that receive only low-income support should follow only the low-income support requirements. All ETCs must file annual reports using FCC Form 481 (available online at <http://usac.org/about/tools/e-file.aspx>), which encompasses all of the information and certifications listed below, with the exception of the 47 C.F.R. § 54.314 certification.

Each ETC receiving high-cost funds must report:

1. A five-year service quality improvement plan, pursuant to 47 C.F.R. § 54.202(a), and progress reports annually thereafter.⁹
2. Information and data separately broken out for both voice service and broadband service for the following:
 - Detailed information concerning outages pursuant to 47 C.F.R. § 54.313(a)(2).¹⁰
 - The number of unfulfilled service requests in the prior calendar year.¹¹
 - The number of complaints per 1,000 connections (separated into fixed and mobile) in the prior calendar year.¹²
 - Certification of compliance with applicable service quality standards and consumer protection rules.¹³
 - Certification of ability to remain functional in emergency situations as set forth in 47 C.F.R. § 54.202(a)(2).¹⁴
 - Price offerings in a format specified by the Wireline Competition Bureau (Bureau).¹⁵
3. A list of holding company, operating companies, affiliates, and branding information as specified in 47 C.F.R. § 54.313(a)(8).
4. Any ETC that serves Tribal lands must complete the Tribal Lands Data Collection Form.¹⁶

⁸ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No.11-42, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*Lifeline Reform Order*) (adopting section 54.422 of the Commission's rules).

⁹ 47 C.F.R. § 54.313(a)(1), (f)(1); *see also* 47 C.F.R. § 54.202(a).

¹⁰ 47 C.F.R. § 54.313(a)(2). At this time, ETCs are not required to submit outage information regarding their broadband service. *See The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting To Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 11-82, Report and Order, 27 FCC Rcd 2650 (2012) (deferring action on possible performance degradation thresholds for measuring an outage of broadband Internet service).

¹¹ 47 C.F.R. § 54.313(a)(3).

¹² 47 C.F.R. § 54.313(a)(4).

¹³ 47 C.F.R. § 54.313(a)(5).

¹⁴ 47 C.F.R. § 54.313(a)(6).

¹⁵ 47 C.F.R. § 54.313(a)(7).

¹⁶ 47 C.F.R. § 54.313(a)(9); *see also Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Telecommunications Bureau Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund*, WC Docket Nos. 10-90 *et al.*, 27 FCC Rcd 8176 (2012).

5. A certification that the pricing of the company's voice services is no more than two standard deviations above the applicable national average.¹⁷
6. Price cap carriers receiving Connect America Phase I incremental support pursuant to 47 C.F.R. § 54.312 must provide certain information related to their eligibility for and use of such support.¹⁸
7. Price cap carriers receiving frozen Connect America Phase I support pursuant to 47 C.F.R. § 54.312(a) or receiving high-cost support to offset reduction in access charges must provide certain certifications related to their broadband obligations.¹⁹
8. Price cap carriers electing to receive model-based support must include in their initial service quality improvement plans a list of the geocoded locations that already receive service meeting the Commission's public interest obligations and the total amount of support, if any, the price cap carrier used for capital expenditures.²⁰ In subsequent years, they must include in their progress reports a certification about their participation in the E-rate program, a geocoded list of the locations to which they have deployed using Phase II support, an address list of the community anchor institutions that they have newly served with broadband in their service areas, and the total amount of Phase II support, if any, they have used for capital expenditures in the previous calendar year.²¹ They must also certify that they have met certain build-out milestones.²²
9. Privately held rate-of-return ETCs must provide a full and complete annual report of the company's financial condition and operations.²³
 - Privately held rate-of-return ETCs that receive loans from the Rural Utilities Service (RUS) must file copies of their annual RUS reports (Operating Report for Telecommunications Borrowers).
 - All privately held rate-of-return ETCs that are not recipients of loans from the RUS and whose financial statements are audited in the ordinary course of business must provide either: (1) a copy of their audited financial statement; or (2) a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers, accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company's financial audit.
 - All other privately held rate-of-return ETCs must provide either: (1) a copy of their financial statement which has been subject to review by an independent certified public accountant; or (2) a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers, with the underlying information subjected to a review by an independent certified public accountant and accompanied by an officer certification that: (a) the carrier was not audited in the ordinary course of business for the preceding fiscal year; and (b) that the reported data are accurate.

¹⁷ 47 C.F.R. § 54.313(a)(10).

¹⁸ 47 C.F.R. § 54.313(b).

¹⁹ 47 C.F.R. § 54.313(c), (d).

²⁰ 47 C.F.R. § 54.313(e).

²¹ *Id.*

²² *Id.*

²³ 47 C.F.R. § 54.313(f)(2).

10. An additional certification if the ETC is located in an area without terrestrial backhaul that no such backhaul options exist and that it is providing service at actual speeds of at least 1 Mbps downstream and 256 kbps upstream within the supported areas served by satellite middle mile facilities.²⁴
11. Incumbent local exchange carriers with rates below the below the rate floor as defined in 47 C.F.R. §54.318 should file pursuant to the following.²⁵
 - Section 54.313(h) requires all incumbent local exchange carriers receiving high-cost support to report all of their rates for residential local service for all portions of their service area, as well as state fees, to the extent the sum of those rates and fees are below the rate floor, and the number of lines for each rate specified. Such ETCs shall report lines and rates in effect as of June 1 of the reporting year. For these purposes, state regulated fees are limited to state subscriber line charges, state universal service fees and mandatory extended area service charges. Federal subscriber line charges and federal universal service fees are not included.
 - In addition to the annual filing, local exchange carriers may file updates of their rates for residential local service, as well as state fees, on January 2 of each year. If a local exchange carrier reduces its rates and the sum of the reduced rates and state fees are below the rate floor, the local exchange carrier shall file such an update. For the update, carriers shall report lines and rates in effect as of December 1.
 - ETCs subject to section 54.313(h) should file their rates and line counts separately from FCC Form 481, instead using the Rate Floor Data Collection form (available at <http://usac.org/hc/tools/forms.aspx>).

Competitive ETCs whose support is being phased down do not have to submit information or certifications related solely to broadband public interest obligations, but must continue to submit information or certifications with respect to their provision of voice service.²⁶

These reporting rules do not apply to carriers that receive support solely from the Phase I Mobility Fund.²⁷

Each ETC receiving high-cost support must also make an annual use certification

All such ETCs must certify that all federal high-cost support provided to such carriers was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.²⁸

²⁴ 47 C.F.R. § 54.313(g).

²⁵ 47 C.F.R. § 54.313(h); *see also* 47 C.F.R. § 54.318.

²⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17853, para. 583.

²⁷ 47 C.F.R. § 54.313(k); such carriers should file annual reports pursuant to 47 C.F.R. § 54.1009.

²⁸ 47 C.F.R. § 54.314(a), (b).

ETCs that are not subject to the jurisdiction of a state and that are designated as ETCs by the FCC must submit this certification with the Administrator and the Commission.²⁹ ETCs that are designated as ETCs by a state must have the relevant state submit this certification on the ETC's behalf.³⁰

Each ETC receiving high-cost support is subject to audits and recordkeeping requirements

All ETCs receiving high-cost support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders.³¹

To assist in complying with these audits, all ETCs receiving high-cost support must retain all records required to demonstrate to auditors that support received was consistent with universal service high-cost program rules. The documentation must be maintained for at least 10 years from the receipt of funding and shall be made available upon request to the FCC, any of its Bureaus or Offices, USAC, and their respective auditors.³²

ETCs that are subject to build-out milestones will also be subject to certain reporting requirements, support reductions, and even possible recovery of support if they miss these deadlines.³³ The non-compliance measures that apply will depend on the size of the compliance gap (i.e., the number of required locations that the ETC fails to build out to by the applicable deadline).³⁴

Each ETC receiving low-income support must report:

1. A list of holding company, operating companies, affiliates, and branding information as specified in 47 C.F.R. § 54.422(a)(1).
2. Detailed information concerning the terms and conditions of voice telephony plans offered to Lifeline subscribers. Note that if the terms and conditions are publicly available, the ETC may provide a link to a public Web site that shows the terms and conditions.³⁵

Each ETC designated by the FCC as a Lifeline-only ETC must also report:

3. Outage information, complaint information, and applicable certifications.³⁶

B. Deadlines

²⁹ 47 C.F.R. § 54.314(b).

³⁰ 47 C.F.R. § 54.314(a).

³¹ 47 C.F.R. § 54.320(a).

³² 47 C.F.R. § 54.320(b).

³³ 47 C.F.R. § 54.320(d).

³⁴ *Id.*

³⁵ 47 C.F.R. § 54.422(a)(2).

³⁶ 47 C.F.R. § 54.422(b).

ETCs must file the annual reports by July 1 of the preceding year in order to receive funds for the subsequent year.³⁷

- ETCs that file their reports after the July 1 deadline will have a reduction in support pursuant to the following schedule:³⁸
 - ETCs that file after the July deadline, but by July 8 will have their support reduced in an amount equivalent to seven days of support.
 - ETCs that file on or after July 9 will have their support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction.
 - Grace period: An ETC that files after July 1 but before July 5 will not receive a reduction in support if the ETC and its holding company, operating companies, and affiliates have not missed the July 1 deadline in any prior year.

The 47 C.F.R. § 54.314 annual certification must be filed by the ETC or the relevant states by October 1 each year in order to receive funds for the following year.³⁹

- If an ETC or relevant state files the certification after the October 1 deadline, the ETC subject to the certification shall receive a reduction in its support pursuant to the following schedule:⁴⁰
 - ETCs subject to certifications filed after the October 1 deadline, but by October 8 will have their support reduced in an amount equivalent to seven days in support.
 - ETCs subject to certifications filed on or after October 9 will have their support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction.
 - Grace period: If the certification is filed after October 1 but before October 5, the ETC subject to the certification will not receive a reduction in support if the ETC and its holding company, operating companies, and affiliates have not missed the October 1 deadline in any prior year.

C. Who May File

For the annual reporting requirement, the ETC may fill out the form or the ETC may designate an agent to fill out the form. If the ETC designates an agent to fill out the form, an ETC officer must sign the certification in section 3005 of the form and provide the required information.

For the annual use certification requirement, if the ETC is designated by the FCC, the certification must be filed in the form of a sworn affidavit executed by a corporate officer. If the ETC is designated by a state, the certification may be filed in the form of a letter from the appropriate regulatory authority for the state.

³⁷ 47 C.F.R. § 54.313(j).

³⁸ *Id.*

³⁹ 47 C.F.R. § 54.314(d).

⁴⁰ *Id.*

D. Where to File

FCC Form 481

FCC Form 481 must be filed with the FCC, USAC, and the relevant state commission, relevant authority in U.S. Territories, or Tribal government, as appropriate.

FCC Form 481 may be completed and submitted to USAC online at USAC's website (<http://usac.org/about/tools/e-file.aspx>). Completed forms may be printed to be submitted to the FCC and others.

The form submitted to the FCC must clearly reference WC Docket No. 14-58 and may be submitted through the FCC's Electronic Comment Filing System (<http://apps.fcc.gov/ecfs/>). In their other filings, parties should follow relevant local rules.

47 C.F.R. § 54.314 Certification

The annual 47 C.F.R. § 54.314 certification must be filed with USAC and with the FCC.

State regulatory authorities and ETCs may file the certification with USAC online at USAC's website (<http://usac.org/about/tools/e-file.aspx>), via email (hccerts@usac.org), or via U.S. mail.

The certification submitted to the FCC must clearly reference WC Docket No. 14-58 and may be submitted through the FCC's Electronic Comment Filing System (<http://apps.fcc.gov/ecfs/>).

E. Confidentiality

Parties seeking confidential treatment of portions of their FCC Form 481 should file with the FCC pursuant to 47 C.F.R. § 0.459. Privately held rate-of-return carriers may file their financial information pursuant to section 54.313(f)(2) subject to a protective order.⁴¹

⁴¹ *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Protective Order, 27 FCC Rcd 14231 (Wireline Comp. Bur. 2012).