

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

In the Matter of
Access Charge Tariff Filings Introducing
Broadband-only Loop Service
WC Docket No. 16-317

ORDER ON RECONSIDERATION

Adopted: November 4, 2016

Released: November 4, 2016

I. INTRODUCTION

1. In the Rate-of-Return Reform Order, the Commission required rate-of-return local exchange carriers (LECs) to impute an amount equal to the Access Recovery Charge (ARC) they assess on voice-broadband lines to their Consumer Broadband-only lines. Pursuant to section 1.113(a) of the Commission's rules, the Bureau sua sponte reconsiders a statement made in a related clarification provided in the Broadband-only Loop Service TRP Order regarding the imputation of these ARC revenues. After further consideration, we now find that an amount equal to the ARC a LEC could apply to a voice/broadband line should be imputed to a retail broadband Internet access offering regardless of whether the carrier offers a Broadband-only Loop Service. Imputing an amount equal to the ARC on retail broadband Internet access offerings best reflects the policies underlying adoption of the imputation requirement in the Rate-of-Return Reform Order and avoids creating an incentive to offer broadband Internet access in a particular manner.

II. BACKGROUND

2. In the Rate-of-Return Reform Order, the Commission adopted significant reforms to the rules governing the provision of universal service support to rate-of-return LECs. The Commission adopted a voluntary path under which rate-of-return carriers may elect model-based support for a term of 10 years in exchange for meeting defined build-out obligations. For carriers not electing model-based support, the Commission modernized the existing interstate common line support (ICLS) rules to provide support in situations in which the customer no longer subscribes to traditional regulated local exchange voice service, i.e. subscribes to stand-alone broadband. This revised form of support is known as Connect America Fund Broadband Loop Support (CAF BLS). To implement these reforms, the

1 Connect America Fund et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al., 31 FCC Rcd 3087, 3161-62, para. 203 (2016) (Rate-of-Return Reform Order). The ARC is the end-user charge component of the ICC recovery mechanism adopted in the USF/ICC Transformation Order. See 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, 17987- 94, paras. 905-16 (2011) (USF/ICC Transformation Order), pets. for review denied sub nom. In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

2 47 CFR § 1.113(a); Access Charge Tariff Filings Introducing Broadband-only Loop Service, Order, Docket No. 16-317 (WCB Oct. 6, 2016) (Broadband-only Loop Service TRP Order).

3 Rate-of-Return Reform Order, 31 FCC Rcd at 3089, para.1.

4 Id. at 3094-117, paras. 17-79.

5 Id. at 3117-57, paras. 80-187.

Commission, among other things, revised certain cost allocation and tariffing rules for carriers to introduce supported Consumer Broadband-only Loop services.<sup>6</sup>

3. As part of these revisions to its tariffing rules, the Commission sought to maintain the balance of the recovery burden as between end user ARC charges and Connect America Fund support (CAF ICC) previously-established in the *USF/ICC Transformation Order*.<sup>7</sup> In the *USF/ICC Transformation Order*, the Commission adopted bill-and-keep as the default methodology for all intercarrier compensation (ICC) charges, established a transition path requiring scheduled reductions to ICC charges and adopted a recovery mechanism to partially mitigate revenue reductions that incumbent LECs would experience as a result of these ICC reductions.<sup>8</sup> Amounts eligible for recovery are first recovered through the ARCs<sup>9</sup> assessed on end-users, and, to the extent not recoverable through ARCs, through CAF ICC.<sup>10</sup> In adopting the recovery mechanism, the Commission recognized the need to limit the burdens such recovery might impose on both end-user customers and universal service contributors.<sup>11</sup>

4. In the *Rate-of-Return Reform Order*, the Commission recognized that supporting Broadband-only Loop Service may lead to a migration away from voice/broadband offerings due to the increased affordability of Broadband-only Loop Service.<sup>12</sup> Rate-of-return LECs providing Broadband-only Loop Service on a tariffed or detariffed basis will recover the costs associated with the provision of that service through some combination of wholesale or end-user rates and the new universal service support. The costs associated with the facilities used to provision services prior to the provision of the Broadband-only Loop Service were recovered through some combination of access charges, end-user charges, and CAF ICC. Because ARCs are only assessed on offerings that include voice service, such a migration would reduce the amount of recovery received from end users through ARC revenues but not the overall recovery amount a carrier was entitled to receive. Thus, recovery amounts not available through ARC charges would be covered by CAF ICC regardless of whether the rate-of-return LEC was recovering some or all of its costs through other rates or means of support. To maintain the careful balancing of recovery between ARC revenue and CAF ICC, the Commission required rate-of-return carriers to impute an amount equal to the ARC charge they assess on voice/broadband lines to their supported consumer broadband-only lines.<sup>13</sup>

5. In the *Broadband-only Loop Service TRP Order*, the Bureau established procedures for the filing of access charge tariffs and Tariff Review Plans (TRPs) for rate-of-return LECs electing to offer Broadband-only Loop Service beginning January 3, 2017, whether on a tariffed or detariffed basis.<sup>14</sup> The

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<sup>6</sup> *Id.* at 3157-62, paras. 188-204.

<sup>7</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17987- 96, paras. 905-20.

<sup>8</sup> See *id.* at 17904, para. 740, 17932, para. 798, 17934, para. 801, 7117956-87, paras. 847-904, 18026-28, paras. 970-71.

<sup>9</sup> Incumbent LECs are authorized to charge ARCs, subject to annual caps and to an overall rate ceiling. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17988-89, paras. 908-09, 17991-92, paras. 913-15; see also 47 CFR §§ 51.915(e), 51.917(e).

<sup>10</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17981, para. 896.

<sup>11</sup> See *id.* at 17985-868, paras. 903-06.

<sup>12</sup> See *Rate of Return Order*, 31 FCC Rcd at 3161-62, para. 203.

<sup>13</sup> *Id.*

<sup>14</sup> *Broadband-only Loop Service TRP Order*.

*Broadband-only Loop Service TRP Order* included a clarification that “an imputation is not applied to a retail broadband Internet access offering.”<sup>15</sup>

### III. DISCUSSION

6. Under section 1.113(a) of the Commission’s rules, the Bureau may, on its own motion, reconsider any action made or taken within 30 days from the date of public notice of such action.<sup>16</sup> In doing so, the Bureau may take any action it could take in acting on a petition for reconsideration, including reversing or modifying the original order.<sup>17</sup>

7. We now reconsider our clarification regarding whether an amount equal to the ARC assessed on voice/broadband offerings need be imputed on rate-of-return LEC retail broadband Internet access offerings. On further reflection, the Bureau concludes that an amount equal to the ARC assessed on voice/broadband lines must be imputed on rate-of-return LEC retail broadband Internet access offerings, when the rate-of-return LEC is providing tariffed or detariffed Consumer Broadband-only Loops to affiliated entities, or to third parties.

8. As discussed above, the Commission established the obligation to impute ARCs so as to account for forgone ARC revenue when customers migrate away from service offerings to which ARCs apply to the newly-supported Broadband-only Loop Service. Imputing an amount equal to the ARC assessed on voice/broadband lines regardless of how the service is sold will more closely maintain the balance between ARC recovery and CAF ICC recovery. This approach also prevents ARC imputations from skewing decisions a rate-of-return LEC may make as to whether to offer retail broadband Internet access service through an affiliate or through its own operations.

### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i) and (j), 5, and 201-209 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 155, 201-209, and sections 0.91 0.291, and 1.113(a) of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 1.113(a), this Order IS ADOPTED.

10. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission’s rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero  
Chief  
Wireline Competition Bureau

<sup>15</sup> *Broadband-only Loop Service TRP Order* at para. 11.

<sup>16</sup> 47 CFR § 1.113(a).

<sup>17</sup> 47 CFR §§ 1.106(k)(1), 1.113(a).