

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

In the Matter of)
Connect America Fund) WC Docket No. 10-90
ETC Annual Reports and Certifications) WC Docket No. 14-58
Developing a Unified Intercarrier Compensation) CC Docket No. 01-92
Regime)

ORDER

Adopted: December 14, 2016

Released: December 14, 2016

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In the Rate-of-Return Reform Order, the Commission adopted significant reforms to the rules governing incumbent local exchange carriers that currently receive high-cost support through the legacy high-cost support mechanisms (rate-of-return LECs), including the adoption of a new Connect America Fund Broadband Loop Support (CAF BLS) mechanism and a voluntary path to model-based support for those rate-of-return carriers (also known as the Alternative Connect America Cost Model, or A-CAM).1 As explained further below, the Rate-of-Return Reform Order required these rate-of-return LECs to impute a particular charge (known as the Access Recovery Charge or ARC) in certain circumstances. The Wireline Competition Bureau (Bureau) is aware of existing uncertainty as to whether this imputation obligation is limited to rate-of-return LECs receiving CAF BLS or whether it applies equally to carriers receiving A-CAM support. Pursuant to the Rate-of-Return Reform Order, we clarify that this imputation obligation applies not only to rate-of-return LECs that receive support from CAF BLS, but also to those that receive support from A-CAM. Accordingly, rate-of-return LECs must impute an amount equal to the ARC they assess on voice/broadband lines on their Consumer Broadband-only Loops receiving support either from CAF BLS or A-CAM.2

II. BACKGROUND

2. In the USF/ICC Transformation Order, the Commission adopted comprehensive intercarrier compensation (ICC) reform measures.3 These reforms included a transition to reduce certain

1 Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (Rate-of-Return Reform Order).

2 Id. at 3159, para. 194 (noting that a "portion of the support a rate-of-return carrier electing model-based support receives will be to cover a portion of the costs of the consumer broadband-only loop"); id. at 3160, para. 195 ("Model-based support replaces the high-cost support amounts (i.e. HCLS, ICLS) amounts a carrier would receive, as well as any CAF BLS associated with consumer broadband-only loops it would have been eligible to receive if it had not elected model-based support.").

3 See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service

ICC rates on an annual basis and a recovery mechanism designed to partially offset revenues reduced as a result of the rate transition.⁴ For rate-of-return LECs, the recovery mechanism begins with calculation of Base Period Revenue (BPR). BPR is the sum of certain ICC intrastate switched access revenues and net reciprocal compensation revenues received by March 31, 2012, for services provided during fiscal year 2011, and the projected revenue requirement for interstate switched access services provided during the 2011-2012 tariff period.⁵ A rate-of-return carrier's BPR is then reduced by five percent initially and by an additional five percent in each year of the transition.⁶ The amount a rate-of-return LEC is entitled to recover in each year of the transition is equal to the adjusted BPR for the year in question less, for each relevant year of the ICC transition, the sum of: (1) projected intrastate switched access revenue; (2) projected interstate switched access revenue; and (3) projected net reciprocal compensation revenue.⁷ This amount, known as Eligible Recovery, is recoverable through an Access Recovery Charge (ARC) assessed on end-users, and, to the extent not recoverable through ARCs, through CAF-ICC support.⁸

3. 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 that currently receive high-cost loop support and interstate common line support (ICLS).⁹ 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.¹⁰ For carriers not electing model-based support, the Commission modernized the existing ICLS rules to provide support in situations where the customer no longer subscribes to traditional regulated local exchange voice service, i.e., subscribes to stand-alone broadband.¹¹ To implement these reforms, the Commission, among other things, revised certain cost allocation and tariffing rules for carriers to introduce supported Consumer Broadband-only Loop services, if they so choose.¹²

4. The Commission acknowledged that providing support to consumer broadband-only loops would likely cause some end users to migrate from their current voice/broadband offerings to supported broadband-only lines due to increased affordability of these services.¹³ It recognized that such changes will reduce the number of ARC-eligible lines under the current rules and thus the amount of Eligible Recovery that the carrier can recover via ARCs assessed on end users.¹⁴ Because the migration of end users to Consumer Broadband-only Loop service would increase the amount of Eligible Recovery

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Reform – Mobility Fund; Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, 26 FCC Rcd 17663, 17872-73, para. 648 (2011) (*USF/ICC Transformation Order*); *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁴ See, e.g., *id.* at 17934-35, para. 801 Fig. 9 (outlining the rate transition); see also *id.* at 17957-61, paras. 850-53 (summarizing the recovery mechanism).

⁵ See 47 CFR § 51.917(b)(7); the 2011-2012 tariff period was July 1, 2011, through June 30, 2012.

⁶ See *id.* § 51.917(b)(3).

⁷ *Id.* § 51.917(d). The demand projections that are part of these projected revenue calculations are “trued-up” after two years. See 47 CFR § 51.917(d)(iii)(D).

⁸ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17981, para. 896.

⁹ *Rate-of-Return Reform Order*, 31 FCC Rcd at 3089, para.1.

¹⁰ *Id.* at 3094-117, paras. 17-79.

¹¹ *Id.* at 3117-57, paras. 80-187.

¹² *Id.* at 3157-62, paras. 188-204.

¹³ *Id.* at 3161-62, para. 203.

¹⁴ *Id.*

to be recovered through CAF ICC, it “would upset the careful balancing of burdens as between end-user ARCs and universal service support, i.e., CAF ICC.”¹⁵ To make certain that the reforms did not unintentionally increase CAF-ICC support, the Commission required that rate-of-return LECs impute an amount equal to the ARC they assess on voice/broadband lines to their supported consumer broadband-only lines. The codified rule, in pertinent part, provides that “[a] Rate-of-Return Carrier must impute an amount equal to the Access Recovery Charge for each Consumer Broadband-Only Loop line that receives support pursuant to §54.901 of this chapter, with the imputation applied before CAF-ICC recovery is determined.”¹⁶

III. DISCUSSION

5. With this Order, we respond to several informal inquiries concerning whether rate-of-return LECs electing model-based (A-CAM) support must impute an ARC on Consumer Broadband-only Loops. This question arises because the order language states that rate-of-return carriers that receive support for Consumer Broadband-only Loops have to impute, while the rule language only refers to those receiving support pursuant to section 54.901. Specifically, section 51.917(f)(4) states that the imputation obligation applies to a Consumer Broadband-only Loop that “receives support pursuant to §54.901”¹⁷ The imputation obligation is thus clearly codified in this rule with respect to carriers receiving CAF BLS. Notably, however, section 51.917(f)(4) does not state that the imputation obligation applies only to carriers receiving CAF BLS, and we clarify here that this obligation also applies to carriers receiving A-CAM support.

6. The *Rate-of-Return Reform Order* requires that rate-of-return LECs impute an ARC on Consumer Broadband-only Loops.¹⁸ The Commission did not in any way limit or condition the duty in the text of that order to Consumer Broadband-only Loops receiving CAF BLS support, and the scope of the imputation requirement must be read in the context of the Commission’s justification for the requirement, which is broader than CAF BLS. In adopting the ARC imputation obligation, the Commission intended to maintain “the careful balancing of burdens as between end-user ARCs and . . . CAF ICC” that had been struck in the *USF/ICC Transformation Order*.¹⁹ As discussed above, the Commission was concerned about the impact migration of end users to Consumer Broadband-only Loop service due to the new support mechanisms would have on CAF-ICC support for lines that would now also be receiving support through one of the new mechanisms.²⁰ This rationale and the lack of any limiting language in the *Rate-of-Return Reform Order* indicate that the Commission intended for rate-of-return LECs receiving support for Consumer Broadband-only Loops to impute an ARC. We accordingly clarify that the Commission created a binding obligation in the *Rate-of-Return Reform Order* requiring rate-of-return LECs that receive support for Consumer Broadband-only Loops to impute an ARC on those lines regardless of whether that support comes from CAF BLS or A-CAM.²¹

¹⁵ *Id.* at 3162, para. 203.

¹⁶ 47 CFR 51.917(f)(4).

¹⁷ *Id.*

¹⁸ *Rate-of-Return Reform Order*, 31 FCC Rcd at 3162, para. 203.

¹⁹ *Id.*

²⁰ *Id.*

²¹ As noted above, in the *Rate-of-Return Order*, the Commission adopted new support mechanisms for rate-of-return LECs that today recover their common line costs through the legacy high-cost mechanisms, such as ICLS. *See supra* n. 2. Because the rate-of-return affiliates of price cap carriers no longer receive support through the legacy high-cost mechanisms, these carriers are not affected by any obligations tied to the new support mechanisms adopted for current recipients of ICLS.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, that pursuant to the authority contained in sections 1, 2, 4(i), 201-203, 220, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-203, 220, 254, and 403, and pursuant to sections 0.91, 0.201(d), and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.201(d), and 0.291, and pursuant to the delegation of authority in footnote 413 of the *Rate-of-Return Reform Order*, this Order is ADOPTED.

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

FEDERAL COMMUNICATIONS COMMISSION

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