

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

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90

ORDER

Adopted: December 16, 2020

Released: December 16, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant on our own motion a waiver of sections 54.901 and 54.903 of the Commission's rules to allow rate-of-return carriers to include their actual rates for consumer broadband-only lines for the first three months of 2019 on their FCC Form 509, rather than imputing revenues based on the maximum rate that would have been assessable pursuant to section 69.132.¹ The Bureau has twice previously granted a waiver of this rule, in part because imputing revenues based on these maximum rates would have the effect of significantly overstating the revenues for many carriers, causing a significant reduction in universal service support. Because similar circumstances once more exist, we find that an additional waiver of these rules will serve the public interest.

II. BACKGROUND

2. In the *2016 Rate-of-Return Reform Order*, the Commission adopted significant changes to the Universal Service Fund (USF) for areas served by rate-of-return carriers.² Among other things, the reforms modernized the rate-of-return program to support standalone broadband offerings, as well as the previously supported interstate portion of the common line, in a single Connect America Fund Broadband Loop Support (CAF BLS) mechanism.³ In essence, CAF BLS supports voice and broadband-only lines to the extent that the carrier's costs (*i.e.*, revenue requirements) exceed its revenues, subject to a budget constraint. CAF BLS is paid preliminarily using forecasted cost and revenue data, but later is trueed up based on actual cost and revenue data.⁴ The true-ups prevent carriers from recovering more revenue from end users and universal service than are necessary to meet their revenue requirements.

3. To determine CAF BLS, a carrier first files FCC Form 508, which forecasts its interstate common line and consumer broadband-only costs and revenues for the upcoming July 1 to June 30 tariff year.⁵ For the purpose of forecasting consumer broadband-only revenue, carriers impute the lesser of the forecasted annual consumer broadband-only revenue requirement or \$42 times the number of forecasted consumer broadband-only lines times 12 months.⁶ This effectively imputes, for the initial calculation of

¹ 47 CFR §§ 54.901(a)(2)(ii), 54.903(a)(4).

² *Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90, et al., Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (*2016 Rate-of-Return Reform Order*).

³ *Id.* at 3119-24, paras. 86-94.

⁴ *See id.* at 3157, para. 187; 47 CFR § 54.903(b)(3).

⁵ 47 CFR § 54.903(a)(3).

⁶ 47 CFR § 54.901(a)(2).

CAF BLS, a consumer broadband-only rate of \$42 per month per loop, unless the carrier's costs are lower. A budget control mechanism is applied subsequently to that calculation, which reduces the amount of CAF BLS disbursed, if necessary to ensure that the support budget is not exceeded.⁷ As a result, a carrier may be permitted to assess a consumer broadband-only rate higher than \$42 to meet its forecasted consumer broadband-only revenue requirement.⁸

4. Later, each carrier files actual cost and revenue data on FCC Form 509.⁹ For the purpose of determining consumer broadband-only revenue, the Commission's rules impute the lesser of the consumer broadband-only revenue requirement or \$42 per month per line, unless the carrier was permitted to assess a higher rate. In that case, revenues would be imputed based on the highest allowable rate, even if the carrier charged a rate lower than what was permitted.¹⁰ This has the effect of preventing carriers from abusing CAF BLS by charging unreasonably low rates and recovering any lost end-user revenues from CAF BLS. The form requires carriers to report a blended rate reflecting the changing rates imputed or charged over the course of the year.

5. The Commission revisited the budget constraint mechanism reductions on two occasions. In March 2018, the Commission granted in part NTCA's petition for reconsideration and eliminated the budget constraint for the July 2017 to June 2018 budget year.¹¹ In the *December 2018 Rate-of-Return Reform Order*, the Commission adopted a new overall budget for rate-of-return carriers, and ordered both the reimbursement of reductions due to the budget constraint from July 1, 2018 through December 31, 2018, and that "there will be no reductions to legacy support from January 1, 2019 through June 30, 2019."¹²

6. To address the effects of the Commission's actions with respect to the budget control mechanism, the Bureau has twice waived the Commission's rules governing the reporting of consumer broadband-only loop revenues on FCC Form 509. On December 20, 2018, the Bureau released an order waiving the FCC Form 509 imputation rules applicable to 2017 revenues so a carrier would be permitted to report the greater of actual consumer broadband-only line revenues or \$42 per line per month, while requiring it to impute the higher consumer broadband-only line rate that the carrier could have charged due to the budget control mechanism.¹³ In doing so, the Bureau relied, in part, on the fact that reporting the higher imputed amounts "would create excessive true-up amounts that would unreasonably reduce CAF BLS" as a result of the Commission's reconsideration of the budget constraint for the second half of 2017.¹⁴ On December 20, 2019, the Bureau released a similar order, relying on the same rationale, waiving the FCC Form 509 imputation rules applicable to 2018 revenues.¹⁵

⁷ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3121, para. 88.

⁸ *Id.*; 47 CFR § 69.132. A carrier may charge a rate for consumer broadband-only service that is less than the maximum that it could assess pursuant to section 69.132 of the Commission's rules.

⁹ 47 CFR § 54.903(a)(4); *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3157, para. 187.

¹⁰ 47 CFR § 54.901(a)(ii). The calculated rate is the maximum permissible rate for a carrier submitting a tariff. 47 CFR § 69.132.

¹¹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, 33 FCC Rcd 2990, 3023-25, paras. 73-82 (2018).

¹² *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11918, para. 83 (2018) (*December 2018 Rate-of-Return Reform Order*).

¹³ *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 12232 (WCB 2018).

¹⁴ *Id.* at 12234, para. 9. The Bureau also concluded the unreasonable true-ups were a consequence of uncertainty of demand consumer broadband-only line during the initial implementation period. *Id.* at 12234, para. 8.

¹⁵ *Connect America Fund*, WC Docket No. 10-90, Order, 34 FCC Rcd 12378 (WCB 2019).

III. DISCUSSION

7. For the reasons discussed below, we waive the Commission's rules to permit carriers to report their actual consumer broadband-only revenues with respect to the first three months of 2019 on FCC Form 509 due on December 31, 2020, rather than the imputed consumer broadband-only revenues based on the maximum permissible consumer broadband-only rate.¹⁶ As with the waivers granted previously, we find that reporting the higher imputed amounts would create excessive true-up amounts that would unreasonably reduce CAF BLS.

8. Generally, the Commission's rules may be waived for good cause shown.¹⁷ The Commission may exercise its discretion to waive a rule where the specific facts make strict compliance inconsistent with the public interest.¹⁸ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹⁹ We find that special circumstances are present here that warrant a deviation from the general rule.

9. The *December 2018 Rate-of-Return Reform Order* eliminated the application of the budget constraint mechanism from January 1, 2019, to June 30, 2019, but was not effective until March 2019 and revised tariffs reflecting the order did not go into effect until April 1, 2019. As a result, from January 1 to March 31, 2019, carriers charged rates that reflected the budget constraint in effect at the time the tariffs were filed. Pursuant to the Commission's rules, these carriers would be required to impute the highest allowable rate for this period when they file their actual cost and revenue data on Form 509 on December 31, 2020. If a carrier were to report consumer broadband-only revenues based on higher rates, as required by our rules, the need for CAF BLS is reduced and the size of the true-ups increases. In the case of reporting revenues actually received, the true-ups would prevent carriers from exceeding their revenue requirement, as intended. Reporting higher imputed revenues in these circumstances, however, would prevent some carriers from meeting their revenue requirements and would render the Commission's decision not to apply the budget constraint moot.

10. We therefore find that a limited waiver to allow carriers to report their actual revenue data for the first quarter of 2019 will serve the public interest. Accordingly, we waive sections 54.901(a)(2)(ii) and 54.903(a)(4) as necessary to permit carriers filing FCC Form 509 on December 31, 2020, to report revenues that reflect their actual consumer broadband-only rates for the period of January 1 to March 31, 2019, rather than imputing revenues based on their maximum allowable consumer broadband-only rates. We note that the requirement for carriers to impute \$42 per loop per month or their consumer broadband-only revenue requirement, where that amount exceeds the actual revenues, will remain in effect.

¹⁶ By operation of the rules, USAC will apply the lesser of the carrier's consumer broadband-only revenue requirement or \$42 per line per month, if that amount is greater than the actual consumer broadband-only revenues reported. 47 CFR § 54.901(a)(2).

¹⁷ 47 CFR § 1.3.

¹⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁹ The Commission may, on an individual basis, take into account considerations of hardship, equity, or more effective implementation of overall policy. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

V. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 5, 201-203, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155, 201-203, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that sections 54.901(a)(2) and 54.903(a)(4) are WAIVED, consistent with this Order.

12. 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

Kris Anne Monteith
Chief
Wireline Competition Bureau