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

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

ORDER

Adopted: March 31, 2020 **Released: March 31, 2020**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. The COVID-19 pandemic endangers numerous American lives with a respiratory illness that continues to spread at an alarming rate throughout the United States.[1] On March 11, 2020, the World Health Organization declared that the COVID-19 outbreak is a pandemic.[2] On March 13, 2020, the President proclaimed that the COVID-19 outbreak in the United States constitutes a national emergency.[3]

2. The Universal Service Fund distributes approximately $382 million each year in legacy high-cost support to competitive eligible telecommunications carrier (ETCs), almost all of which are mobile wireless providers.[4] Current rules require a competitive ETC to spend all such support in a particular service area,[5] thus limiting the flexibility of affiliated competitive ETCs to respond to the COVID-19 nationwide pandemic. Given the national emergency stemming from the pandemic, we temporarily waive, on our own motion,[6] this requirement and give affiliated competitive ETCs the flexibility to use such support for the provision, maintenance, and upgrading of facilities and services within any of the designated service areas of an affiliated ETC, regardless of whether those areas span more than one state. We expect this flexibility will empower these carriers to dedicate federal funds where most needed to ensure sufficient network capacity for Americans who are telecommuting, remotely learning, and connecting to telehealth resources during the pendency of the COVID-19 pandemic.[7]

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[1] *See* Centers for Disease Control and Prevention, Coronavirus (COVID-19), https://www.cdc.gov/coronavirus/2019-ncov/index.html (last visited Mar. 27, 2020); *see also* Johns Hopkins Coronavirus Resource Center, https://coronavirus.jhu.edu/map.html (last visited Mar. 27, 2020).

[2] *See* World Health Organization, Director General's Opening Remarks at the Media Briefing on COVID-19 (Mar. 11, 2020), https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020.

[3] Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.

[4] Competitive ETCs in Alaska, Puerto Rico, and the U.S. Virgin Islands do not receive legacy high-cost support because the Commission has already reformed mobile high-cost support funding mechanisms in those areas.

[5] 47 CFR §§ 54.7, 54.207.

[6] 47 C.F.R. § 1.3

[7] We focus here on competitive ETC legacy support, not those forms of high-cost support that have been reformed (such as support in Alaska, Puerto Rico, or the U.S. Virgin Islands or support for wireline competitive ETCs).

II. BACKGROUND

3. Efforts to slow the spread of the COVID-19 pandemic depend in part on effective communications with the American public about preventative measures such as social distancing that can reduce transmission of the illness, as well as other health and safety information that can save lives.[8] Many Americans rely on mobile wireless services to access and receive information about the pandemic.

4. Competitive ETCs receive a fixed amount of legacy high-cost universal service support.[9] Section 254 of the Act requires that universal service support be used only for "the provision, maintenance, and upgrading of facilities and services for which the support is intended."[10] The Commission has restricted high-cost support recipients from spending universal service funds received for a service area outside of the area for which it was originally designated.[11]

5. This waiver Order applies only to mobile competitive ETCs that are geographically restricted in how they spend decades old funding awards because this legacy support has not yet been reformed and refocused on the areas that are most in need of support. Competitive ETC legacy high-cost support continues to flow to areas served by other subsidized mobile ETCs as well as to areas already served by other unsubsidized mobile carriers.

III. DISCUSSION

6. Generally, the Commission's rules may be waived for good cause shown.[12] Specifically, the Commission may exercise its discretion to waive a rule where "the particular facts make strict compliance inconsistent with the public interest."[13] In addition, the Commission may "take into account considerations of hardship, equity, or more effective implementation of overall policy" on an individual basis.[14] Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.[15]

7. We find that good cause exists to temporarily waive, on our own motion, the requirement that a mobile competitive ETC receiving legacy high-cost universal service support must use all funding for their own service area rather than an affiliated ETC's service area.[16] As an initial matter, we find that

[8] *See* World Health Organization, Coronavirus disease (COVID-19) Pandemic, https://www.who.int/emergencies/diseases/novel-coronavirus-2019 (last visited Mar. 27, 2020).

[9] *Connect America Fund et al.,* Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17772, para. 296, n.459 (2011), *aff'd sub nom. In re FCC 11-161,* 753 F.3d 1015 (10th Cir. 2014); 47 CFR § 54.307.

[10] 47 U.S.C. § 254(e).

[11] *See, e.g.*, *Connect America Fund et al.*, Order, 28 FCC Rcd 14887, 14891, para. 11 (WCB 2013); *see also* 47 CFR § 54.314.

[12] 47 CFR § 1.3.

[13] *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[14] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

[15] *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)) (*Northeast Cellular*).

[16] This waiver is consistent with recent steps taken by the Commission to provide flexibility to universal service recipients and increased connectivity to the public during the pandemic. *See, e.g.*, *Rural Health Care Universal Service Support Mechanism, et al.*, Order, DA 20-290, at 1-2, para. 1 (WCB Mar. 18, 2020) (waiving the gift rules applicable to the Rural Health Care and E-Rate programs to allow rural health care providers and schools and libraries to solicit and accept improved broadband connections or equipment for telehealth or remote learning during the pandemic); *Lifeline and Link Up Reform and Modernization*, Order, DA 20-285, at 1, para. 2 (WCB Mar. 17, 2020) (waiving certain Lifeline program requirements to help program participants remain eligible during the pandemic); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and*

(continued….)

the COVID-19 pandemic constitutes special circumstances warranting a waiver because of the imminent health risk it poses to the public. We also find that a waiver will serve the public interest by providing the flexibility to use legacy high-cost support in any affiliated service area to address the challenges presented by this pandemic to communications networks. Efforts to slow the spread of the pandemic have sought to save lives by reducing the number of individuals that contract the disease and by mitigating the strain on the health care system to care for those affected. A critical component of efforts to address and contain this public health emergency is the ability of health care and public safety organizations to communicate effectively with the public, many of whom are heavily dependent on mobile wireless services for information and communications.

8. Moreover, COVID-19 infections and outbreaks are not occurring at a uniform intensity across the United States. Some areas are facing intense outbreaks while other areas are just beginning to see an increase in cases and deaths. Additionally, some states and counties have ordered schools closed and residents to stay at home while other areas have implemented less restrictive measures. When individuals stay at home rather than following typical movement patterns, there can be increased network demands at residential locations. Further, some cities are deploying temporary hospitals that will potentially generate unusually high demand for services in certain locations as medical personnel work at these locations. The variation in intensity of outbreaks coupled with diverse state- and county-based restrictions and the deployment of temporary facilitates will generate geographically uneven and unusual demands on mobile wireless networks. Network operators must deploy additional resources in certain areas and optimize their networks to meet these increased demands and ensure reliable mobile service. To meet these needs during this emergency, the flexibility granted by this Order will allow competitive ETCs to allocate limited high-cost funds to areas in most need of support during the COVID-19 pandemic.

9. We find that it is in the public interest to allow a competitive ETC the flexibility to reallocate its use of legacy high-cost support amongst the service areas of any affiliated ETC to maximize its ability to make more efficient decisions about its use of support in light of the current costs of providing service in high-cost areas during the pandemic, while still satisfying the statutory obligation to use such support for its intended purposes.[17] Under this waiver, competitive ETCs will have the flexibility to use such support for the provision, maintenance, and upgrading of facilities and services within any of the designated service areas of an affiliated ETC (e.g., where several ETCs share a common holding company), regardless of whether those areas span more than one state.[18] This flexibility will be afforded until June 30, 2020, at which time we will evaluate whether circumstances warrant an extension.[19]

10. Nothing in this Order permits a competitive ETC to use high-cost support to provide service outside of its or an affiliated competitive ETC's designated service areas, nor does it permit any competitive ETC to use high-cost support for anything but its intended purposes. We expect recipients that take advantage of this flexibility to be able to produce evidence to document how such support was

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Speech Disabilities, Order, DA 20-281, at 1, para. 1 (CGB Mar. 16, 2020) (waiving certain requirements to ensure the uninterrupted availability of telecommunications relay services during the pandemic).

[17] *See* 47 U.S.C. § 254(e); 47 CFR § 54.7.

[18] *See* 47 U.S.C. §§ 214(e)(1), 214(e)(5), 254(e); 47 CFR §§ 54.7 (describing intended use of federal universal service support), 54.207(a) (defining designated service areas).

[19] Competitive ETCs will certify in October 2021 that they have used all funds for the preceding calendar year, here calendar year 2020, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. 47 CFR § 54.314.

used to respond to changes in wireless usage related to the COVID-19 pandemic.[20] As with all universal service support recipients, competitive ETCs are subject to random audits of their expenditures.[21] This temporary waiver does not extend to any change in the amount awarded for high-cost support in any area, the timetable for deploying service in any such area, or any other aspect of our rules other than as set forth in this Order.

IV. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 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 54.7 and 54.207 of the Commission's rules, 47 CFR §§ 54.7, 54.207, are waived to the extent provided herein.

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

[20] *See* 47 CFR §§ 54.314 (requiring states to certify annually that all federal high-cost support provided to ETCs within that state was used for its intended purpose), 54.320 (requiring ETCs to retain for at least ten years all records required to demonstrate to auditors that the support received was consistent with program rules).

[21] 47 CFR § 54.320(a).