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

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

ORDER

Adopted: June 3, 2021 **Released: June 3, 2021**

By the Commission:

1. In this Order, the Commission waives, on its own motion, the application of the current budget control mechanism for rate-of-return carriers that receive high-cost universal service support from legacy mechanisms.[1] We adopt instead a budget constraint of 0%, i.e. a full waiver of the budget constraint, for the July 2021 to June 2022 tariff year, and direct the Wireline Competition Bureau (Bureau) to work with the Universal Service Administrative Company (USAC), the administrator of the federal Universal Service Fund (Fund), to recalculate the budget control mechanism using 0% and make the revised information publicly available.

2. *Background.* Rate-of-return carriers that rely on traditional legacy support mechanisms are eligible for High Cost Loop Support (HCLS) and Connect America Fund Broadband Loop Support (CAF BLS). HCLS provides support to carriers with high loop costs based on the extent that an individual company's cost per loop exceeds the national average cost per loop.[2] CAF BLS supports voice and broadband-only lines to the extent that the carrier's costs (i.e., revenue requirements) exceed its revenues.[3] In the *USF/ICC Transformation Order*, the Commission adopted an overall budget for the high-cost universal service program, including a $2 billion annual budget for rate-of-return carriers.[4] To ensure that the support distributed to rate-of-return carriers did not exceed $2 billion annually, the Commission subsequently adopted a "self-effectuating mechanism"—known as the budget control mechanism—to enforce the rate-of-return budget by reducing HCLS and CAF BLS claims as necessary to meet the budget constraint.[5] The Commission subsequently adopted a guaranteed minimum so that no carrier's total legacy support in any year would fall below its CAF BLS forecast for that year.[6]

[1] 47 CFR §§ 54.901(f), 54.1310(d); *see also* 47 CFR § 1.3 (Commission may waive its rules on its own motion).

[2] 47 CFR Part 54, Subpart M.

[3] 47 CFR § 54.901.

[4] *Connect America Fund, et al.*, WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17711, para. 126 (2011) (*USF/ICC Transformation Order*); *aff'd sub nom., In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (*In re: FCC 11-161*).

[5] *Connect America Fund, et al.*, WC Docket No. 10-90, et al., Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3143, para. 146 (*2016 Rate-of-Return Reform Order*). Because support amounts for the two other types of rate-of-return carriers, model-based (A-CAM) and Alaska Plan, are fixed, the budget control mechanism only affects legacy carriers, *i.e.*, those carriers receiving Connect America Fund Broadband Loop Support (CAF BLS).

[6] *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, 11922-23, para. 95 (2018) (*December 2018 Rate-of-Return Reform Order*).

3. The budget control mechanism is designed to impose financial discipline on carriers receiving legacy rate-of-return support and to provide stability to the Fund.[7] In operation, the budget control mechanism ensures that overall rate-of-return carrier support increases each year by no more than the rate of inflation. Therefore, while some carriers' support will increase and others may decrease, depending on a carrier's revenue requirement, the total amount of support for legacy rate-of-return carriers increases annually based on inflation.[8]

4. Since its adoption, the Commission has periodically acted to mitigate the impact of the budget control mechanism where warranted. In March 2018, for example, the Commission eliminated the budget constraint for the July 2017 to June 2018 budget year, based partly on grounds that the approximately 12% constraint resulted in a large reduction in support for some carriers that was "not sufficiently 'predictable' for affected rate-of-return carriers to engage in the long-term planning for the high-speed broadband deployment needed in rural America."[9] In December 2018, the Commission ordered the reimbursement of reductions due to the budget constraint from July 1, 2018 through December 31, 2018, eliminated the budget constraint for January 1, 2019 through June 30, 2019, and revised the budget control mechanism so that it would be more predictable.[10] As a result of the Commission's two 2018 orders, there were effectively no budget constraints between June 2017 and June 2019. In the last two years, the budget constraint has ranged from less than 0.5% (from July 2019 to December 2019) to 3.03% (from July 2019 to December 2019).[11]

5. On May 3, 2021, USAC announced that the new budget control adjustment factor for July 2021 to June 2022 would be 8.58146%.[12] This means that the projected total support (including true-ups) for rate-of-return carriers projected for July 1, 2021 to June 30, 2022 will exceed the budget by approximately 8.6%. USAC calculates a pro rata reduction for carrier support projections to ensure that total support remains within the budget constraint but then ensures that no carrier's support goes below the minimum threshold for that carrier.[13]

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[7] *See 2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3143, para. 146; *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11919, paras. 86-86.

[8] We note that even after the application of the budget control mechanism, the vast majority of all legacy carriers (more than 90%) will see increased projected support as compared with last year when carriers with reductions in either projected HCLS or BLS support are excluded. *See* USAC Budget Control Mechanism Announcements, 2021-2022 Budget Analysis, https://www.usac.org/wp-content/uploads/high-cost/documents/Budget-Analysis/2021-2022-Budget-Analysis.xlsx (last visited May 4, 2021) (USAC 2021-2022 Budget Analysis); USAC Budget Control Mechanism Announcements, 2020-2021 Budget Analysis, https://www.usac.org/wp-content/uploads/high-cost/documents/Budget-Analysis/2020-2021-Budget-Analysis.xlsx (last visited May 4, 2021). Thus, the budget control mechanism is constraining the increase in support rather than causing a decrease in support.

[9] *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) (*March 2018 Rate-of-Return Reform Order*).

[10] *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11917-18, paras. 79, 83.

[11] USAC, Budget Control Mechanism, https://www.usac.org/high-cost/resources/rules-orders/budget-control-mechanism/ (last visited May 4, 2021). HCLS is subject to an annual cap that changes each year on January 1, based on the rural growth factor. Based on the application of the rural growth factor, there was no reduction from January 2020 to June 2020 or January 2021 to June 2021. The total and carrier-specific annual HCLS amounts, as well as the rural growth factor, are published in the annual HCLS filing made by the National Exchange Carrier Association (NECA) the preceding October 1. 47 CFR §§ 54.1302, 54.1303. The budget control mechanism is published in May and applied to the July 1 to June 30 tariff year. *See* 47 CFR § 54.1310(d)(1). The annual schedules for HCLS and the budget control mechanism mean that the amount of HCLS changes in the middle of the budget control period, by an amount not known when the budget control calculations are completed.

[12] *See* USAC 2021-2022 Budget Analysis.

[13] *Id*.

6. *Discussion.* On our own motion, we waive the announced budget constraint and reduce the budget constraint to 0% only for the 2021-2022 tariff year given unique cash flow challenges related to the pandemic. Generally, the Commission's rules may be waived for good cause shown.[14] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[15] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[16] Waiver of the Commission's rules is appropriate when (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.[17]

7. The announced new budget control reduction factor of nearly 8.6% would be substantially higher than last year. NTCA– the Rural Broadband Association states that limiting increases in carrier support could cause cash flow concerns for carriers, particularly given that carriers have strived to keep customers connected even when bills were unpaid.[18] These circumstances could pose significant burdens on legacy carriers, by subjecting them to insufficient cash flow at a time when they are facing increased expenses. To ensure that these small companies are not subject to financial strain, we find it is in the public interest to waive the application of our rules. The last year of the COVID-19 pandemic has put all Americans under strain and demonstrated the importance of broadband.[19] Telecommunications companies, including legacy companies serving some of the most rural areas of the country, may be subject to increased costs to provide safe working conditions, maintain existing services, and meet the demands of new customers.[20] Granting a waiver here is also consistent with relief the Commission provided in other contexts in acknowledgment of the unprecedented challenges raised by the pandemic to carriers and consumers.[21]

8. We recognize that lowering the budget control mechanism percentage will put increased pressure on the Fund. The Commission has long recognized the need to balance of principles of section 254(b) to ensure that support is sufficient with avoiding an excessive burden on all ratepayers that contribute to the Fund. The Commission must take into account both the affordability of and support for services in high-cost areas and the demands on areas where customers are net Fund contributors.[22] In light of the special circumstances of the pandemic and the importance of providing broadband services

[14] 47 CFR § 1.3.

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

[16] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular,* 897 F.2d at 1166.

[17] *Northeast Cellular*, 897 F.2d at 1166.

[18] Letter from Michael R. Romano, Senior Vice President, NTCA–The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Apr. 26, 2021) (requesting the Commission consider waiving the application of the budget constraint "in the face of cash flow concerns and other challenges brought on by the pandemic") (NTCA Letter).

[19] *Id.*

[20] FCC, Coronavirus, https://www.fcc.gov/coronavirus (last visited May 3, 2021) (listing the FCC's efforts to ensure that Americans stay connected during the COVID-19 pandemic).

[21] *See, e.g.*, Rural Health Care Universal Service Support Mechanism, WC Docket No. 02-60, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 35 FCC Rcd 14544 (WCB 2020) (extending waivers previously granted sua sponte with respect to E-Rate and Rural Health Care gift rules); Lifeline and Linkup Modernization, WC Docket No. 11-42, Order, 35 FCC Rcd 4482 (WCB 2020) (adopting a sua sponte waiver with respect to showings for Lifeline eligibility); Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 35 FCC Rcd 2978 (WCB 2020) (waiving a series of E-Rate filing and service implementation deadlines).

[22] *See, e.g.*, *High-Cost Universal Service Support, et al.,* WC Docket No. 05-337, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4087, para. 28 (2010); *USF/ICC Transformation Order,* 26 FCC Rcd at 17682-83, paras. 57-58.

during this unprecedented time, however, we find it in the public interest to waive the budget control mechanism.

9. We direct the Bureau to work with USAC to recalculate the budget control mechanism at 0% and make the revised information publicly available. Additionally, to simplify the budget control mechanism this funding year, we also waive, on our own motion, the requirement that the budget control mechanism be adjusted January 1 to take into account the rural growth factor for the HCLS cap.[23] Using data from FCC Form 507, staff estimates that applying the rural growth factor to HCLS for the first six months of 2022 in advance would result in a reduction in the budget control mechanism to approximately 7%. Given that we are taking into account the rural growth factor in advance, there is no need for recalculation in January.

10. Based on staff analysis, it appears that the majority of the increase in support for legacy carriers is due to the conversion of existing voice-and-broadband lines to broadband-only lines and increases in customers subscribing to broadband services rather than increased investment in new broadband or increases in expenses. We note that $48 million of the roughly $111 million "overbudget" amount is because of true-ups for calendar year 2019, which is before the COVID-19 pandemic affected the economy.[24] However, we note that we do not yet have final cost data for 2020 as that will be contained in FCC Form 509, which carriers will file at the end of 2021. We direct the Bureau to conduct a more detailed analysis on this data and the factors increasing legacy carrier support to determine whether the increase of the budget constraint is a result of the pandemic or a more enduring situation.

11. We expect that today's waiver of the budget control mechanism will reduce the rates for Consumer Broadband-Only Loop (CBOL) services that would otherwise be charged beginning July 1, 2021 by at least some rate-of-return carriers that receive CAF BLS support.[25] We recognize that such carriers are in the midst of preparing their annual tariff filings. To be effective on July 1, 2021, their annual tariff filings made on 15-days' notice must be filed on June 16, 2021.[26] To be effective on 7-days' notice, they must be filed on June 24, 2021.[27] Carriers benefiting from this waiver must file tariff revisions reflecting the effect today's waiver will have on their rates. Recognizing, however, that carriers may not have sufficient notice to revise the annual tariff filings that they have been preparing, we do not require affected carriers to account for the waiver of the budget control mechanism in their upcoming annual tariff filings. Instead, we require affected carriers to account for the impact of the budget control

[23] 47 CFR § 54.1310(d).

[24] *See* USAC 2021-2022 Budget Analysis. These true-ups are generally a result of carriers underpredicting the number of lines that would convert from voice-and-broadband lines to broadband-only lines.

[25] Such carriers include the CAF BLS support attributable to CBOL, net of the budget control mechanism effect, in their CBOL rate calculation, which is included in one of the Tariff Review Plans (TRPs) used for the upcoming annual access charge tariff filing. *See July 1, 2021 Annual Access Charge Tariff Filings*, WC Docket No. 21-148, Order, DA 21-568 (WCB May 14, 2021) (*2021 Annual Filing Procedures Order*). Pursuant to §54.901(e)(3) and (4), CAF BLS is attributed first to the Interstate Common Line Revenue Requirement and second as available to the CBOL revenue requirement. We do not expect that the budget control mechanism waiver will impact common line charges (also known as subscriber line charges) because CAF BLS support for CBOL is subordinate to CAF BLS support for common line and because of the existing caps on subscriber line charges. *See* 47 CFR § 69.104.

[26] 47 U.S.C. § 204(a)(3) ("A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis…[which]…shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action…before the end of that 7-day or 15-day period, as is appropriate."); 47 CFR § 61.58(a)(2)(i) (pursuant to section 204(a)(3) of the Act, local exchange carriers may file streamlined tariffs on 7 days' notice if it proposes only rate decreases, and on 15 days' notice for any other streamlined tariff including those that propose rate increases). *See 2021 Annual Filing Procedures Order*, para. 7; *July 1, 2021 Annual Access Charge Tariff Filings*, WC Docket No. 21-148, Order, DA 21-433 (WCB Apr. 16, 2021).

[27] 47 U.S.C. § 204(a)(3); 47 CFR § 61.58(a)(2)(i).

mechanism either in their annual tariff filings or in revised tariff filings with an effective date no later than 45 days after adoption of this Order. We waive, on our own motion, the current tariff filing fee for the limited purpose of submitting such filings.[28] For purposes of such tariff revisions, we also find good cause to waive, on our own motion, the prohibition on making changes to rates that have not been in effect for at least 30 days or have not yet become effective and any refund liability that carriers may otherwise incur if rates based on the pre-waiver budget control reduction factor are higher than rates based on the post-waiver budget control reduction factor between July 1, 2021, and the required effective date of the revised rates.[29]

12. Accordingly, IT IS ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that sections 54.901(f) and 54.1310(d), 47 CFR §§ 54.901(f), 54.1310(d), ARE WAIVED to the extent described above.

13. IT IS FURTHER ORDERED that, pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[28] 47 CFR § 1.1105.

[29] *See* 47 CFR § 61.59.