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

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

ORDER

Adopted: May 9, 2022 **Released: May 10, 2022**

By the Commission: Commissioner Carr issuing a statement.

1. In this Order, the Commission temporarily waives, on its own motion, the application of the 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 2022 to June 2023 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 calculate the budget control mechanism using 0%.

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.

4. Since its adoption, the Commission has periodically acted to mitigate the impact of the budget control mechanism where warranted.[8] Faced with a potential 8.6% constraint for July 2021 to June 2022, for example, the Commission waived the announced budget constraint and reduced it to 0% due to the unique and continued cash flow challenges related to the pandemic.[9]

5. Based on carrier filings, the projected budget control adjustment factor for July 2022 to June 2023 would be 0.8571997. This means that the projected total support (including true-ups) for legacy rate-of-return carriers for July 1, 2022 to June 30, 2023 will exceed the budget by approximately 14%. To determine each carrier's support, 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.[10]

6. *Discussion.* On our own motion, we waive the budget constraint and reduce it to 0% for the 2022-2023 tariff year. We find that a waiver is in the public interest given the substantial reduction in support that would result from imposition of the budget constraint, as well as the unique and continued cash flow and other economic challenges carriers face as a result of the pandemic.

7. Generally, the Commission's rules may be waived for good cause shown.[11] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[12] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[13] 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.[14]

8. Absent a waiver, the projected budget control reduction factor would exceed 14%, resulting in a substantial reduction in support for most legacy rate-of-return carriers, at a time when they are facing cash flow issues and increased expenses arising out of the pandemic. In part, the growth in projected support is due to an increased conversion of voice lines to broadband-only lines, which receive a higher support amount, and an increase in the number of new customers subscribing to broadband-only

[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] *See, e.g.*, *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*) (waiving the budget constraint from July 2017 to June 2018); *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11917-18, paras. 79, 83 (reimbursing budget constraint reductions implemented from July 1, 2018 through December 31, 2018 and eliminating budget constraint from January 1, 2019 through June 30, 2019).

[9] *See Connect America Fund*, WC Docket No. 10-90, Order, 36 FCC Rcd 9766 (2021) (*2021 Budget Control Waiver Orde*r).

[10] *Id*.

[11] 47 CFR § 1.3.

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

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

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

lines,[15] particularly given population migration during the pandemic to areas served by legacy rate-of-return carriers.[16] NTCA – the Rural Broadband Association (NTCA) explains that "a mix of increased investment and greater customer adoption of standalone broadband services has led to demand for support in excess of what was projected four years ago."[17] Moreover, while the budget control mechanism annually provides an upwards adjustment to account for inflation, it does not fully account for increased costs in this instance because the inflation factor is backward looking. For instance, the inflation adjustment for the budget control mechanism for the relevant time period was 1.3%. Projected CAF BLS, though, is forward looking (i.e., based on projected costs), and today's projected costs account for the current inflation rate of 8.1%.[18]

9. Moreover, carriers continue to face cash flow and other economic challenges resulting from the pandemic. USTelecom contends, for example, that a reduction due to the budget constraint "would severely impact these companies as they continue to struggle with the financial issues that continue to flow from the COVID-19 pandemic, including supply chain issues."[19] NTCA states that in a 2021 survey "members consistently indicate that they are facing materially higher prices for labor and materials," noting that 35% of responding members reported a 20% to 40% increase in the cost of finished products or components, with another 20% reporting a 40% increase in the cost of supplies.[20] NTCA maintains that these challenges have continued to grow in recent months, and companies' "efforts to carry more inventory to mitigate supply chain delays have affected cash flows."[21] NTCA further reports that carriers' cash flows have been negatively affected due to the need to draw down on loans more quickly to respond to higher expenses, as well as undertake accelerated deployment.[22] Additionally, NTCA states that carriers' cash flows have been impacted by their ongoing support for consumers through the pandemic, including the provision of free or discounted Internet services for educational purposes, offering higher speed service without significant rate increases, and writing-off bills or late fees when consumers have been unable to pay.[23] Finally, NTCA notes that, because legacy carriers are paid

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[15] Based on staff review of internal FCC Form 507 data, the number of voice lines for legacy rate-of-return carriers decreased by 112,000 lines in 2021, but broadband only lines in 2021 increased by 151,000.

[16] *See* Letter from Michael Romano Senior Vice President – Industry Affairs and Business Development, NTCA—The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1-2 (filed Apr. 29, 2022) (NTCA April 29, 2022 *Ex Parte*).

[17] *See* Letter from Michael Romano Senior Vice President – Industry Affairs and Business Development, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Apr. 27, 2022). *See also* NTCA April 29, 2022 *Ex Parte* at 2-3.

[18] *See* Table 4. Price Indexes for Gross Domestic Product and Related Measures: Percent Change from Preceding Period in BEA News Release: Gross Domestic Product, First Quarter 2022 https://www.bea.gov/sites/default/files/2022-04/gdp1q22_adv.pdf.

[19] *See* Letter from B. Lynn Follansbee, Vice President –Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Apr. 27, 2022) (USTelecom *Ex Parte*). *See also* Letter from Derrick B. Owens, Senior VP of Government and Industry Affairs, and Gerald J. Duffy, Regulatory Counsel, WTA - Advocates for Rural Broadband, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Apr. 29, 2022) (WTA *Ex Parte*) ("Support reductions of this magnitude impair the ability of these small companies to extend and upgrade their broadband networks, repay loans, maintain service quality and retain their staffs as well as create pressures for rate increases"); Letter from Randy Tyree, GRTyree Consulting (representing National Tribal Telecommunications Association) to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90, Advocacy Talking Points Attachment (filed Apr. 28, 2022) (budget control mechanism "pause should be extended due to ongoing pandemic and supply chain concerns").

[20] *See* NTCA April 29, 2022 *Ex Parte* at 3.

[21] *Id.*

[22] *Id.*

[23] *Id.*

retroactively for expenses that have already been incurred, any "reductions or disruptions" in support can lead to cash flow challenges.[24]

10. Taken together, we find that current circumstances pose significant burdens on legacy carriers, which would be exacerbated should there be a significant reduction in support, at a time when they are facing insufficient cash flow and increased expenses.[25] 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 budget constraint rules. The COVID-19 pandemic has continued to put all Americans under strain and demonstrated the importance of broadband. Telecommunications companies, including legacy companies serving some of the most rural areas of the country, have been and will continue to be subject to increased costs to address labor and supply issues, maintain existing services, and meet the demands of new customers.[26] Granting a waiver here is also consistent with relief the Commission provided last year and in other contexts in acknowledgment of the unprecedented challenges raised by the pandemic to carriers and consumers.[27]

11. 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 the principles of section 254(b) to ensure that support is sufficient while 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.[28] In these particular circumstances, we find that the benefits of waiving the budget control mechanism for the 2022-2023 tariff year outweigh the limited impact on the Fund given the significant reduction in support that would result from imposition of the budget constraint, ongoing challenges stemming from the pandemic, and the importance of providing broadband services during this unprecedented time.

12. We direct the Bureau to work with USAC to calculate the budget control mechanism at 0% and to announce this to the legacy rate-of-return carriers. 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 effective January 1, 2023 to take into account the rural growth factor for the HCLS cap.[29] Finally, we note that providers receiving CAF BLS support are subject to mandatory buildout obligations to deploy broadband service of at least 25/3 Mbps to a carrier-specific number of locations by the end of 2023.[30] We plan to consider CAF BLS deployment obligations in light of changing speed needs and funding necessary to support deployment that will apply beginning in 2024.[31]

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[24] *Id.*

[25] *Id. See also* WTA *Ex Parte* at 1, and USTelecom *Ex Parte* at 1.

[26] *See generally* NTCA April 29, 2022 *Ex Parte*. FCC, Coronavirus, https://www.fcc.gov/coronavirus (last visited Apr. 29, 2022) (listing the FCC's efforts to ensure that Americans stay connected during the COVID-19 pandemic).

[27] *See generally 2021 Budget Control Waiver Orde*r. *See, e.g.*, Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Order, DA 22-323 (WCB 2022); 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).

[28] *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.

[29] 47 CFR § 54.1310(d).

[30] *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11926, para. 110.

13. Accordingly, IT IS ORDERED that, pursuant to section 1.3 of the Commission's rules, 47 CFR § 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.

14. 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

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[31] Press Release, Federal Communications Commission, FCC Announces Tentative Agenda for May Open Meeting (Apr. 27, 2022), https://www.fcc.gov/document/fcc-announces-tentative-agenda-may-open-meeting-9 (announcing that the Commission will consider a notice of proposed rulemaking seeking comment on Enhanced A-CAM, FCC-CIRC2205-02, at 20-21, para. 55).

STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *Connect America Fund*, WC Docket No. 10-90, Budget Control Mechanism Waiver Order (May 9, 2022)

As inflation continues to rage in this country, families and businesses alike are feeling the squeeze. Rural internet providers are not exempt from the pressure this puts on their costs of doing business. As a result, the dollars they need to extend their networks and connect Americans are not going nearly as far today as they did a short while ago. So today's decision makes eminent sense. Now is not the time to cut back on the support for these rural providers.