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

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

ORDER

Adopted: May 23, 2023 **Released: May 23, 2023**

By the Commission:

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 2023 to June 2024 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 (USF or Fund), to implement 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 interstate common line and broadband-only line 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

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

[2] 47 CFR Part 54, Subpart M.

[3] *Id*. § 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, para. 126 (2011) (*USF/ICC Transformation Order*); *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

[5] *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3143, para. 146 (2016) (*2016 Rate-of-Return Reform Order*). Because support amounts for the two other types of rate-of-return carriers, model-based (Affordable Connect America Cost Model) and Alaska Plan, are fixed, the budget control mechanism only affects legacy carriers, i.e., those carriers receiving CAF BLS.

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]

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. On April 3, 2023, NTCA — the Rural Broadband Association (NTCA), in anticipation that USAC would announce a significant budget control adjustment factor, filed a letter with the Commission.[8] While not formally requesting a waiver of the budget constraint, NTCA put forth several reasons justifying such a waiver.[9] NTCA, among other things, argues that "substantial ensuing cuts in the CAF BLS and HCLS support [resulting from the budget control adjustment factor] would undermine the efforts of hundreds of small providers to fulfill and sustain the mission of delivering better broadband to millions of rural Americans at affordable rates."[10]

5. Based on carrier filings, USAC announced on May 1, 2023 that the projected budget control adjustment factor for July 2023 to June 2024 would be 0.8165.[11] This means the projected total support (including true-ups) for legacy rate-of-return carriers for July 1, 2023 to June 30, 2024 will exceed the budget by approximately 18.35%.[12] 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.[13]

6. *Discussion*. On our own motion, we waive the budget constraint and reduce it to 0% for the 2023-2024 tariff year. We find 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 they emerge from the pandemic.

7. 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

[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*).

[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 11919-20, paras. 86-87.

[8] Letter from Michael Romano, Executive Vice President, NTCA to Marlene H. Dortch, Secretary, FCC, WC Docket 10-90 et al., at 1 (filed Apr. 3, 2023) (NTCA Letter).

[9] *Id*. at 7.

[10] *Id*. at 1-2.

[11] *See* USAC, 2023-2024 Budget Analysis (rel. May 1, 2023), https://www.usac.org/high-cost/resources/rules-orders/budget-control-mechanism/ (USAC Budget Analysis).

[12] *Id*. The Commission waived the budget control mechanism for both the 2021 and 2022 tariff years, citing the significant burden to rate-of-return carriers during the pandemic. *See Connect America Fund*, WC Docket No. 10-90, Order, FCC 22-32, at para. 5, 10 (rel. May 10, 2022) (*2022 BCM Order*). USAC projected a potential 8.6% constraint in July 2021 and a 14% constraint in July 2022. *Id.*

[13] *See id*. at para. 5.

[14] 47 CFR § 1.3.

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

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]

8. Absent a waiver, the projected budget control reduction factor would exceed 18%, resulting in a substantial reduction in support for most legacy rate-of-return carriers at a time when they continue to face cash flow issues and increased expenses as they emerge from the pandemic. The Commission's rules expect that carriers would have an opportunity to make up any reduction to CAF BLS through higher consumer broadband-only revenues.[18] Reduced support could therefore lead to increased prices to consumers as carriers seek to offset the gap in funding. With an 18.35% reduction factor, carriers, on average, would be required to impute a monthly rate of $73 for broadband-only connections, up from $42 per month.

9. The growth in projected support by carriers is due, in part, to an increased conversion of voice lines to broadband-only lines,[19] which receive a higher support amount, and an increase in the number of new customers subscribing to broadband-only lines,[20] particularly given population migration during the pandemic to rural areas, many of which are served by legacy rate-of-return carriers.[21] Even as we emerge from the pandemic and workers increasingly are returning to the office, the importance of teleworking remotely and having increased access to telehealth in hard-to-serve areas remains.[22] The demand for broadband service at ever faster speeds will thus likely continue in the upcoming tariff year.[23]

10. Moreover, even though 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 4.2%.[24] 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 7%.[25]

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[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] *See* 47 CFR §§ 54.901(a)(2)(ii), (e), 69.132. Carriers may forgo the lost revenue and choose not to increase prices to its consumers, but our rules would nonetheless impute revenue at the highest allowable rate. *See 2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3123-24, para. 94.

[19] *See* 47 CFR § 54.901(g) ("[A] consumer broadband-only loop is a line provided by a rate-of-return incumbent local exchange carrier to a customer without regulated local exchange voice service, for use in connection with fixed Broadband Internet access service . . . .").

[20] *See* NTCA Letter at 2, 4 (discussing increases in broadband subscriptions in recent years among its members and estimating that over the past two years "standalone broadband connections grew by nearly 20% . . . with 7% coming from new customers").

[21] *Id*. at 2 (discussing population growth in rural areas, citing a recent report by the United States Department of Agriculture's Economic Research Service) (citation omitted).

[22] *Id*. at 3 ("Although telehealth spikes from the COVID-19 pandemic have subsided, overall usage is higher than before the pandemic – indicating a fundamental shift in how Americans interact with their healthcare providers . . . . Similarly, although many workers are returning to offices on a more frequent basis, telework arrangements have become far more common and, in many workplaces, remote working for at least part of each week appears to be an ensconced practice emerging from the pandemic.").

[23] *See, e.g.*, NTCA Letter at 5 (comparing results of the 2019 and 2022 NTCA member surveys, which shows a 21% increase in the number of customers that could on average receive 100 Mbps service or greater).

[24] *See* USAC Budget Analysis, Demand Calcs tab notes.

[25] *See* Bureau of Economic Analysis, News Release: Gross Domestic Product, First Quarter 2023, Table 4: Price Indexes for Gross Domestic Product and Related Measures: Percent Change from Preceding Period (rel. Apr. 27, 2023), https://www.bea.gov/sites/default/files/2023-04/gdp1q23_adv.pdf.

Given that CAF BLS and HCLS help to recover costs already incurred, the impact of inflation and increased costs due to supply chain constraints "will be incorporated into the costs that providers must recover for years to come even . . . as the nation emerges from the pandemic."[26] Reductions or disruptions to CAF BLS and HCLS support resulting from application of the budget control mechanism "can introduce significant cash flow concerns" for rate-of-return carriers and potentially lead to increased rates for rural consumers to offset any reductions in universal service support.[27] Accordingly, while we remain committed to maintaining financial discipline in our USF support programs, we are hesitant to apply the budget control mechanism at this juncture, which could jeopardize consumer access to broadband service in rural areas at rates reasonably comparable to their urban counterparts.

11. Taken together, we find the current circumstances pose significant burdens on legacy carriers, which would be exacerbated should there be a sizable reduction in support. To ensure these small companies are not subject to financial strain, which could lead to significant increases in rates imposed on rural consumers, we find it is in the public interest to waive the application of our budget constraint rules. 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 as we continue to emerge from the pandemic.[28]

12. 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.[29] In these particular circumstances, we find the benefits of waiving the budget control mechanism for the 2023-2024 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 as we emerge from the pandemic, and the importance of providing broadband services during this unprecedented time.

13. Separately, the Commission remains committed to re-evaluating the deployment obligations and funding levels for such providers that will apply in 2024.[30] In addition, the recent report on the "Future of the Universal Service Fund" recommends the Commission initiate a proceeding to consider, among other things, "when and under what circumstances continuing [high-cost] support is necessary to develop, sustain, and improve broadband operations and how best to determine which carriers may need such support and in what amounts" in light of the substantial investments in broadband infrastructure anticipated under the Broadband Equity, Access and Deployment program administered by the National Telecommunications and Information Administration (NTIA).[31] These proceedings will

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[26] NTCA Letter at 5-6.

[27] *Id*. at 6.

[28] *2022 BCM Order* at para. 1.

[29] *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.

[30] *See Connect America Fund et al*., WC Docket No. 10-90 et al., Notice of Proposed Rulemaking, FCC 22-35, at para. 58 (rel. May 20, 2022). Providers receiving CAF BLS support are subject to mandatory obligations to deploy broadband service of at least 25/3 Mbps to a carrier-specific number of locations by the end of 2023. *See December 2018 Rate-of-Return Order*, 33 FCC Rcd at 11926, para. 110.

[31] *See Report on the Future of the Universal Service Fund*, WC Docket No. 21-476, Report, FCC 22-67, at para. 41 (rel. Aug. 15, 2022); 47 U.S.C. § 1702(b); Department of Commerce, NTIA, Broadband Infrastructure Program, Notice of Funding Opportunity (2021), https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf.

likely result in updates to the Commission's budget for high-cost support, which further supports relief from strictly applying the budget control mechanism into 2024.

14. We direct the Bureau to work with USAC to calculate the budget control mechanism at 0%. 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, 2024 to take into account the rural growth factor for the HCLS cap.[32]

15. 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.

16. 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

[32] 47 CFR § 54.1310(d).