



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92; FCC 17-36]

Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) grants the Petition for Reconsideration filed by NTCA–The Rural Broadband Association (NTCA) of the Commission’s Rate-of-Return Reform Order with respect to the average per-location, per-project construction limitation on universal service support provided for in the Rate-of-Return Reform Order. Amending the rule as described below will encourage carriers to plan cost-effective broadband deployment projects that include higher-cost locations, while maintaining adequate incentives for the efficient use of universal service funds.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418-0428 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Order on Reconsideration in WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92; FCC 17-36, adopted on April 20, 2017 and released on April 21, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, S.W., Washington, D.C. 20554, or at the following Internet address:

http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0421/FCC-17-36A1.pdf

I. Order on Reconsideration

1. By this Order, the Commission grants the Petition for Reconsideration filed by NTCA of the Commission's Rate-of-Return Reform Order, 81 FR 24282, April 25, 2016, with respect to the average per-location, per-project construction limitation on universal service support provided for in the Rate-of-Return Reform Order. The Commission finds that amending the rule as described below will encourage carriers to plan cost-effective broadband deployment projects that include higher-cost locations, while maintaining adequate incentives for the efficient use of universal service funds.

2. In the Rate-of-Return Reform Order, the Commission adopted a Capital Investment Allowance to limit universal service reimbursement of capital expenses associated with very high-cost locations, with a goal of preserving funds for more efficient projects with deployment to a greater number of lower-cost locations. As part of the Capital Investment Allowance, the Commission adopted a rule precluding carriers from seeking universal service support for all capital expenses associated with any construction project with average per-location costs above a company-specific "Maximum Average Per-Location Construction Project Limitation."

3. NTCA seeks reconsideration of how the construction limitation is applied. NTCA contends that disallowing all costs associated with a construction project will cause carriers to exclude certain locations to reduce the average per-location cost of the project, with the possible consequence of permanently "stranding" some locations without broadband-capable service. For example, if a carrier subject to a \$10,000 average per-location limitation developed a project costing \$105,000 to serve 10 locations (i.e., with an average cost per-location served of \$10,500), the cost of the entire project would be disallowed. The carrier might instead exclude a handful of the highest cost locations to bring the average per-location cost below the threshold. Once excluded, however, there may not be a subsequent project that deploys service to those locations as efficiently as the first project and, as a result, the location may never receive broadband-capable service.

4. NTCA therefore requests that the rule disallow, for the purpose of seeking universal service support, only the portion of a project's expenses that exceed the average per-location threshold.

In the example above, where the \$10,500 average per-location cost of the project exceeds the carrier's \$10,000 Maximum Average Per Location Construction Project Loop Plant Investment Limitation, the carrier would report \$100,000 (i.e., \$10,000 per location) for universal service support purposes and exclude \$5,000 (i.e., the amount in excess of \$10,000 per location). In that case, a carrier might elect to deploy service to the highest-cost locations without prejudice to its ability to receive universal service support for the project, up to the amount of the average per-location cap.

5. Upon reconsideration, the Commission agrees that wholly disallowing costs associated with projects exceeding the construction limitation could have the effect of preventing deployment to some locations that a carrier might otherwise choose to serve. As the Commission noted in adopting the Capital Investment Allowance, “[a]lthough it is the Commission’s goal to ensure broadband deployment throughout all areas, finite universal service resources must be used where they are most needed.” NTCA’s proposed solution is to retain the average per-location construction limitation as a maximum amount includable for universal service support purposes in connection with a construction project. The Commission finds that this solution adequately preserves two critical Commission interests: first, promoting efficient use of universal service funds to maximize the number of high-cost locations with broadband-capable facilities, and second, enabling some locations to be efficiently included within another deployment project (when they might otherwise be denied service altogether). The Commission therefore grants NTCA’s petition with respect to the construction limitation.

II. Procedural Matters

6. Paperwork Reduction Act. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

7. Final Regulatory Flexibility Certification. The Regulatory Flexibility Act of 1980 as amended (RFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings,

unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.” The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

8. In this Order on Reconsideration, the Commission amends the construction project limitation within the Capital Investment Allowance to permit carriers to report, for universal service purposes, capital expenses per location up to the established per-location per project limit, rather than disallowing all capital expenses associated with construction projects in excess of the limit. This project-specific limitation provides a reasonable upper limit on the amount of per-location capital expenses associated with a carrier’s new construction project that the Commission expects will rarely be exceeded. Moreover, to the extent that this rule change has a significant economic impact on any small carriers, the rule change will provide such carriers additional flexibility to undertake new construction projects that exceed the limit without risk of losing all universal service support associated with the project. Because the Commission anticipates that this rule will not affect a substantial number of carriers, the Commission does not anticipate that it will affect a substantial number of small entities. Therefore, the Commission certifies that the requirements of this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order on Reconsideration including a copy of this final certification to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 605(b).

9. Congressional Review Act. The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

III. Ordering Clauses

10. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1 through 4, 214(e)(6), and 254 of the Communications Act of 1934, 47 U.S.C. 151-154, 214(e)(6), 254, and pursuant section 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by NTCA on January 3, 2017 IS GRANTED to the extent indicated above and this Order on Reconsideration IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register.

11. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

12. IT IS FURTHER ORDERED that pursuant to section 1.427 of the Commission's rules, 47 CFR 1.427, this Order SHALL BE EFFECTIVE 30 days after publication of the text or summary thereof in the Federal Register.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54 -- UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend §54.303 by revising paragraph (f) introductory text to read as follows:

§54.303 Eligible Capital Investment and Operating Expenses.

* * * * *

(f) Construction allowance adjustment. Notwithstanding any other provisions of this section, a rate-of-return carrier must exclude from the data it submits for the purposes of obtaining high-cost support under subpart K or subpart M of this part the amount of Loop Plant Investment associated with a new construction project that exceeds the Maximum Average Per Location Construction Project Limitation for that project as determined by the Administrator according to the following formula:

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[FR Doc. 2017-10099 Filed: 5/18/2017 8:45 am; Publication Date: 5/19/2017]