6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10-90; FCC 18-37]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) for the period beginning January 1, 2017, increases the amount of operating costs that carriers that predominantly serve Tribal lands can recover from the universal service fund (USF) in recognition that they are likely to have higher costs than carriers not serving Tribal lands. This action will provide additional funding to these carriers to provide both voice and broadband services to their customers.

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

FOR FURTHER INFORMATION CONTACT: Suzanne Yelen, Wireline Competition Bureau, (202) 418-7400 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket Nos. 10-90; FCC 18-37, adopted on March 27, 2018 and released on April 5, 2018. 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 SW., Washington, DC 20554 or at the following Internet address: https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0405/FCC-18-37A1.pdf.

Synopsis

I. INTRODUCTION

1. In this Report and Order (Order), for the period beginning January 1, 2017, the Commission increases the amount of operating costs that carriers that predominantly serve Tribal lands can recover from the universal service fund (USF) in recognition that they are likely to have higher costs

than carriers not serving Tribal lands. This action will provide additional funding to these carriers to provide both voice and broadband services to their customers.

2. In March 2016, the Commission adopted the Rate-of-Return Reform Order and FNPRM establishing a new mechanism for the distribution of Connect America Fund support in rate-of-return areas. In the March 2016 Rate-of-Return Reform Order and Further Notice of Proposed Rulemaking (FNPRM), 81 FR 24282, April 25, 2016 and 81 FR 21511, April 12, 2016, the Commission adopted a limitation on the amount of operating expenses (opex) for which rate-of-return carriers may receive high-cost support, such that each carrier's opex eligible for high-cost support is limited to a regression model-generated opex per location plus 1.5 standard deviations. In the FNPRM, the Commission asked whether the opex limitations should be modified for carriers serving Tribal lands.

3. The Commission is persuaded based on the record before us that there is good reason to increase the opex limitation for carriers receiving legacy high-cost support that primarily serve Tribal lands because of the increased costs of providing service on Tribal lands. Both the National Tribal Telecommunications Association (NTTA) and Gila River Telecommunications, Inc. (GRTI) cite a number of unique costs faced by carriers serving Tribal lands. They explain that carriers generally must invest significant time and financial resources in securing rights-of-way and easements to install new broadband facilities on Tribal lands due to the number of permissions that must be obtained. Such permissions include the consent of multiple owners of allotted lands, as well as the consent of Tribal authorities, the Bureau of Indian Affairs (BIA), and other administrators and managers of Native trust lands. In some cases, letters of support from Tribal villages in or near the construction areas are also required. NTTA and GRTI represent that the process of obtaining Tribal cultural clearances, as well as the cost of compliance with the Archeological Resources Protection Act of 1979 and the National Historic Preservation Act of 1966, and coordination of National Environmental Protection Act compliance with BIA, are often significant. Commenters also point out that Tribal sovereignty issues require additional negotiation and legal review, that many Tribes require that qualified members of the Tribe be given preference in hiring and promotion, and that some Tribal authorities require construction observation by a Tribal member. In sum, the Commission is persuaded based on the record before us that there are unique

costs associated with serving Tribal lands that warrant revisiting the opex limit adopted by us for this subset of carriers. Therefore, the Commission relaxes the opex limit for those study areas most in need where a majority of the housing units are on Tribal lands, as determined by the Bureau using U.S. Census data.

4. The Commission declines at this time to remove the opex limitation altogether and instead raise the limitation to 2.5 standard deviations above the regression-determined amount for those carriers that qualify subject to the criteria set out below. All carriers, including those that predominantly serve Tribal lands, should have incentives to prudently manage their operating expenditures. Although the Commission finds that carriers serving Tribal lands have expenses that are significantly greater than those serving non-Tribal lands, commenters have failed to show in this circumstance that there is no need for any opex limitation. Taking into account that factor, and mindful of the generally higher costs of serving Tribal lands, the Commission therefore decides that carriers whose opex limit will be relaxed will have their opex limitation raised to 2.5 standard deviations above the regression-determined amount. For example, as shown below, a carrier with $20,000 in opex costs and 58 percent of its opex eligible for support will now have 89 percent of its opex eligible for support. Moreover, when other carrier costs, such as taxes and capital expenses are considered, the opex limitation has a small effect on a carrier's revenue requirement.

	Opex Costs	OPEX Cost Percent Eligible for Support	Allowed Opex Costs (Opex Costs * Eligible Percent)	Other Carrier Costs	Revenue Requirement
No Opex Limitation	$20,000	100%	$20,000	$15,000	$35,000
1.5 Standard Deviations	$20,000	58%	$11,600	$15,000	$26,600
2.5 Standard Deviations	$20,000	89%	$17,712	$15,000	$32,712

5. In addition, the Commission limits this relief to those carriers meeting the following conditions. First, the carrier has not deployed broadband service of 10 Mbps download/1 Mbps upload to 90 percent or more of the housing units on the Tribal lands in its study area. Second, unsubsidized competitors have not deployed broadband service of 10 Mbps download/1 Mbps upload to 85 percent or more of the housing units on the Tribal lands in its study area. The Commission believes that these conditions will limit this relief to those carriers with the greatest need to accelerate broadband deployment.

6. All universal service support must be necessary and reasonable for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The Commission understands that some carriers serving Tribal lands may have significant sources of telecommunications-associated revenue which is passed through to a tribe or may have particular costs imposed by a tribe. The Commission expects Tribal carriers to be able to demonstrate in the event such revenue or costs are questioned that in fact the revenues or cost are necessary and reasonable for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

7. Bureau staff estimates in 2017 and/or 2018 that five carriers that have been affected by the opex cap are eligible for the relief. The Commission concludes that a 2.5 standard deviation limit will still provide an incentive for eligible carriers to avoid imprudent or unnecessary expenses, while recognizing the higher costs associated with providing service on Tribal lands. Because we determine that an opex limit of 2.5 standard deviations is appropriate for those study areas where a majority of the housing units are on Tribal lands and that meet our other conditions, we direct the Universal Service Administrative Company (USAC) to use the 2.5 standard deviation metric for these study areas for support calculations for the period beginning January 1, 2017, when the opex limitation was implemented.

II. PROCEDURAL MATTERS

A. Paperwork Reduction Act

8. This document does not contain new 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 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).

B. Congressional Review Act

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

10. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analyses (IRFA) was incorporated in the Rate-of-Return Reform Order and/or FNPRM. The Commission sought written public comment on the proposals in the Rate-of-Return Reform FNPRM, including comment on the IRFA. The Commission did not receive any relevant comments in response to this IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

11. The Report and Order increases the amount of operating expenses that rate-of-return carriers predominantly serving Tribal lands can recover from the universal service fund (USF). This increase recognizes that carriers serving Tribal lands are likely to have higher operating costs than carriers serving non-Tribal areas.

12. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "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).

13. There are three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA, which represents 99.7% of all businesses in the United States. In addition, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 89,327 entities may qualify as "small governmental jurisdictions."

14. The action taken in this Report and Order would affect a maximum of approximately 50 small entities and will likely only affect approximately seven or eight entities per year.

15. No additional reporting, recordkeeping, or other compliance requirements are required by this Report and Order.

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Commission has considered all of these factors subsequent to receiving substantive comments from the public and potentially affected entities. The Commission has considered the economic impact on small entities, as identified in comments filed in response to the Rate-of-Return Reform FNPRM and its IRFA, in reaching its final conclusions and taking action in this proceeding.

17. The Commission has, at the request of the carriers, increased the amount of operating expenses that rate-of-return carriers predominantly serving Tribal lands can recover from the universal service fund (USF). By raising this limitation, we recognize the higher costs of these small carriers in serving Tribal areas. The higher operating expense limit does not involve additional reporting or recordkeeping requirements.

III. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 1302 that this Report and Order IS ADOPTED.

19. IT IS FURTHER ORDERED that part 54, of the Commission's rules, 47 CFR part 54, IS AMENDED as set forth in the following.

20. IT IS FURTHER ORDERED that the rules adopted herein WILL BECOME EFFECTIVE **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

21. IT IS FURTHER ORDERED that USAC implement the rule adopted herein for support calculations beginning January 1, 2017.

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 Dortch,
Secretary,
Office of the 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 adding paragraph (a)(6) to read as follows:

§ 54.303 Eligible Capital Investment and Operating Expenses.

(a) * * *

(6) For those study areas where a majority of the housing units are on Tribal lands, as determined by the Wireline Competition Bureau, and meet the following conditions, total eligible annual operating expenses per location shall be limited by calculating Exp ($\hat{Y}$ + 2.5 * mean square error of the regression): the carrier serving the study area has not deployed broadband service of 10 Mbps download/1 Mbps upload to 90 percent or more of the housing units on the Tribal lands in its study area and unsubsidized competitors have not deployed broadband service of 10 Mbps download/1 Mbps upload to 85 percent or more of the housing units on the Tribal lands in its study area.

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