



FCC REPORT

A Summary of Federal
Orders, Court Rulings, and
Reporting Requirements

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FCC Adopts Additional High-Cost USF Reforms for Rate-of-Return Carriers

On March 23rd, the FCC released a [Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking](#) in which it adopts additional reforms to the High-Cost universal service support program for rate-of-return carriers. In the *Report & Order* (R&O), the FCC codifies rules related to expenses prohibited from recovery through support and interstate rates, and makes additional funding available for carriers that elected Alternative Connect America Cost Model (A-CAM) support. In the *Third Order on Reconsideration*, the Commission addresses several issues from the 2016 *Rate-of-Return Reform Order*, including mitigation of the budget control mechanism (BCM). And, in the *Notice of Proposed Rulemaking* (NPRM), the FCC seeks comment on additional reforms to the rate-of-return High-Cost program.

Report & Order

Ineligible Expenses

The R&O codifies existing rules that protect the High-Cost program from waste, fraud, and abuse by explicitly prohibiting the use of support for expenses that are not used for the provision, maintenance, and upgrading of facilities and services for which the high-cost support is intended. In addition, the R&O adopts a presumption against recovery through interstate rates for specific types of expenses not used and useful in the ordinary course and identifies other expenses presumed not used and useful unless customary for similarly situated companies. The rules adopted in the R&O are prospective for both high-cost support and interstate ratemaking, but the underlying obligations are preexisting and many of the adopted rules codify existing precedent.

Expenses Ineligible for High-Cost Support Recovery. The types of goods and services ineligible for high-cost support are organized into three broad expense categories – personal expenses, expenses unrelated to operations, and corporate luxury goods – and within each category, the Commission specifies certain types of goods and services not eligible for support. The list is not comprehensive, but

provides a codified “bright-line” prohibition on seeking high-cost support for some types of expenses. Carriers are reminded that they are also prohibited from seeking support for *any* expenses that are not used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

To ensure compliance, rate-of-return ETCs will be required to identify on their annual FCC Form 481 their cost consultants and cost consulting firm, or other third party, if any, used to prepare cost studies, or other calculations used to calculate high-cost support for their submission. The FCC contends that identifying a carrier’s cost consultants and cost consulting firms will help NECA, the Commission, and USAC identify and rectify patterns of noncompliance, and potentially fraud, during audits. The R&O directs NECA to work with its members to develop processes to ensure compliance with the eligible expenses rules.

Expenses Presumed Ineligible for Recovery Through Interstate Rates. The R&O amends the FCC’s rules to provide guidance to legacy rate-of-return ILECs regarding investments and expenses that are presumed not “used and useful” and thus, as a general matter, may not be recovered through regulated interstate rates. These investments and expenses are divided into two broad categories: (1) those that would not be expected to be used and useful in the ordinary course, and (2) those that would not be used and useful unless customary for similarly situated companies. This second category is intended to capture types of expenses that may be customary among small companies, but possibly subject to abuse. Expenses presumed not used and useful in the ordinary course and those not used and useful unless customary for similarly situated companies are organized into same three categories used for high-cost support recovery: (1) personal expenses, (2) expenses unrelated to operations, and (3) corporate luxury goods.

Providing Additional A-CAM Support

The R&O directs the FCC’s Wireline Competition Bureau to offer additional support up to \$146.10 per location to all carriers that accepted revised offers of A-CAM support. Under the new offer, all locations with costs above \$52.50 per location will be funded up to a per-location funding cap of \$146.10, and deployment obligations will be adjusted accordingly. If all eligible carriers accept this offer, the FCC anticipates that it would result in approximately \$36.5 million more support per year for the 10-year A-CAM term. It would also increase by more than 17,700 the number of locations that will receive 25/3 Mbps over the course of the support term, with another 14,000 locations receiving 10/1 Mbps. The increase in A-CAM support does not impact Connect America Fund Broadband Loop Support (CAF BLS) for legacy rate-of-return carriers.

In the future, the Wireline Bureau will release a public notice announcing the revised A-CAM support amounts and corresponding deployment obligations. Carriers will have 45 days to confirm whether they will accept the revised offer. Acceptance of the revised offer will be irrevocable.

In order to true up support that would have been disbursed in 2017 at the \$146.10 per-location cap support amounts for carriers accepting the revised offers, USAC is directed to make one-time lump sum payments. USAC will disburse that support the month following the release of a public notice authorizing those carriers that accept the revised offer.

Third Order on Reconsideration

The *Third Order on Reconsideration* reconsiders various aspects of the 2016 *Rate-of-Return Reform Order*. This includes mitigating the BCM from July 2017-June 2018, the addition of an inflation factor to calculate the operating expenses (OpEx) limitation, and the inclusion of broadband-only loops in calculating the corporate operations expense limitation.

First, the FCC eliminates the effect of the BCM for the current budget year of July 2017-June 2018. During this budget year, the support claims of legacy rate-of-return carriers have been reduced by approximately \$180 million, or 13 percent, due to application of the BCM. USAC, working with the Wireline Bureau, will determine an efficient methodology to calculate the amounts withheld as a result of the BCM and make lump sum payments to fully fund support claims to the affected carriers in the second full quarter after the effective date of the *Third Order on Reconsideration*.

Next, the FCC recognizes that the OpEx limitation may constrain support for rising costs, potentially diminishing carriers' ability to maintain and support their networks. As such, the Commission reconsiders how the OpEx limitation is calculated to include the Gross Domestic Product-Chained Price Index (GDP-CPI) as an annual adjustment factor. This inflation adjustment will be applicable for five years. Thereafter, the Commission may revisit the inflation adjustment to assess whether it accurately reflects carriers' experienced changes in costs and if it remains necessary to protect carriers from inflation-driven cost increases. NECA will calculate each carrier's OpEx limitation for the following calendar year by multiplying the GDP-CPI inflation adjustment factor used in the Rural Growth Factor by the carrier's OpEx limitation for the current year. The inflation adjustments will be implemented beginning with expenses incurred in 2017.

The *Third Order on Reconsideration* also amends the rules to include Consumer Broadband Only Loops (CBOLs) in the calculation of each carrier's corporate operations expense limitation. Under the current rules, only voice and voice-broadband loops are included in the calculation. In an extreme case, a carrier with customers that exclusively have chosen to subscribe through CBOLs would not be eligible to recover any of its corporate operations expenses. The FCC expects that including CBOLs, as well as voice and voice-broadband loops, will provide parity for those carriers with CBOLs.

The *Report and Order* and *Third Order on Reconsideration* will become effective 30 days after publication in the Federal Register, with the exception of rules and requirements requiring OMB approval. Those provisions will become effective immediately upon publication of OMB approval in the Federal Register.

Notice of Proposed Rulemaking

The NPRM seeks comment on revising the high-cost USF budget for rate-of-return carriers. The NPRM also seeks comment on whether to offer a new opportunity for legacy rate-of-return carriers to elect model-based support. For this new model offer, the FCC generally proposes to use the A-CAM and parameters adopted in the 2016 *Rate-of-Return Reform Order*, but with several proposed revisions such as incorporating a Tribal Broadband Factor into the model. The NPRM proposes to limit the new model offer to legacy rate-of-return carriers that would be "glide path"

carriers – *i.e.*, those carriers for whom the new offer of model-based support would be lower than their legacy support. The performance and deployment obligations would be the same as the those required of existing A-CAM recipients.

In addition, the NPRM seeks comment on fully funding existing A-CAM carriers using a \$200 per-location funding cap, and asks what additional deployment obligations may be appropriate. The NPRM also proposes to provide legacy rate-of-return carriers with a threshold level of annual support that would not be subject to the BCM. And, it proposes to modify the BCM to use only a pro rata reduction applied as necessary and to no longer include a per-line reduction.

Finally, the NPRM seeks comment on other reforms, including the need for caps on capital and operating expenses, using an auction process to address substantial competitive overlaps, and other options for simplifying the legacy rate-of-return mechanism.

Comments on the NPRM will be due 30 days following publication in the Federal Register, with replies due 60 days after publication.

FCC Increases OpEx Limitation for Carriers That Predominantly Serve Tribal Lands

In a [Report and Order](#) released April 5th, the FCC increases the amount of operating costs that carriers that predominantly serve Tribal lands can recover from the USF. This will result in additional funding to these carriers to provide both voice and broadband services to their customers on Tribal lands.

The Order raises the OpEx limitation to 2.5 standard deviations above the regression-determined amount for those carriers meeting the following conditions: (1) the carrier has not deployed broadband service of 10/1 Mbps to 90 percent or more of the housing units on the Tribal lands in its study area; and (2) unsubsidized competitors have not deployed broadband service of 10/1 Mbps to 85 percent or more of the housing units on the Tribal lands in its study area.

The FCC estimates in 2017 and/or 2018 that five carriers that have been affected by the OpEx cap are eligible for this relief: Pine Telephone Company, Terral Telephone Company, Gila River Telecommunications, Fort Mojave Tel, and Saddleback Communications. The Order directs 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.

The rules adopted in the Order will become effective 30 days after publication in the Federal Register.

Revised CBOL Rules Effective May 3rd

The FCC's February 15th *Second Order on Reconsideration and Clarification* that reconsiders rules relating to the provision of Consumer Broadband-Only Loops (CBOLs) has been published in the [Federal Register](#) establishing an effective date of May 3rd for the revised rules. Specifically, the Order replaces the surrogate cost method for CBOLs, revises CBOL imputation rules, and lastly, clarifies matters concerning reductions in Connect America Fund Broadband Loop Support. (See the [March issue](#) of the FCC Report for an in-depth article.)

FCC to Consider New Rules to Address Rural Call Completion Problems

The FCC has released a [draft *Second Report and Order and Third Further Notice of Proposed Rulemaking*](#) that would adopt new measures, and seek comment on others, to better address the problem of rural call completion. The item will be considered at the Commission's April 17th meeting.

The *Second Report and Order* would require "covered providers" (entities that select the initial long-distance call path for more than 100,000 retail subscriber lines) to monitor the performance of the "intermediate providers" to which they hand off calls. By holding covered providers responsible for call completion performance to rural ILECs and rural CLECs, it will be less likely for calls to "fall through the cracks" along a lengthy chain of intermediate providers. Covered providers would also be required to make available a point of contact to address rural call completion issues in order to facilitate communication about problems that occur. The *Third Further Notice of Proposed Rulemaking* (FNPRM) proposes rules to implement the recently enacted Improving Rural Call Quality and Reliability Act of 2017 (RCC Act).

The *Second Report and Order* requires that, for each intermediate provider with which a covered provider contracts, the covered provider will: (a) monitor the intermediate provider's performance in the completion of call attempts to rural telephone companies from subscriber lines for which the covered provider makes the initial long distance call path choice; and (b) based on the results of that monitoring, hold the intermediate provider accountable for their performance, including by removing the intermediate provider from a particular route after sustained inadequate performance. This monitoring requirement entails both *prospective* evaluation to prevent reasonably foreseeable problems, as well as *retrospective* investigation of any rural call completion problems that arise. Covered providers are accountable for the performance of all intermediate providers in the path of calls for which they make the initial long distance call path choice. Covered providers that fail to remediate problems are subject to enforcement action.

The *Second Report and Order* also requires covered providers to make available on their websites a telephone number and email address for receiving and responding promptly to any rural call completion issues. Covered providers must ensure that any staff reachable through this contact information has the technical capability to promptly respond to and address call completion concerns. Covered providers must keep the contact information current, updating it with any changes within 10 business days.

In addition, the *Second Report and Order* eliminates the existing data reporting requirements for covered providers established in 2013. The FCC concluded that the existing reporting rules are burdensome on covered providers while the resulting reports have not been particularly useful in discovering the source of rural call completion problems. The *Order* maintains the existing recording and retention requirements on covered providers for the time being.

In the FNPRM, the Commission proposes rules to implement the RCC Act, which directs the FCC to establish registration requirements and service quality standards for intermediate providers. (See the [March issue](#) of the FCC Report for details.) Among other things, the FNPRM proposes that covered providers would not be allowed to rely on any unregistered intermediate providers in the path of a call and that covered providers would be responsible for knowing the identity of all intermediate providers in a call path. The FNPRM also proposes to require intermediate providers to take reasonable steps to abide by certain industry best practices for rural call completion and to have processes in place to monitor their own rural call completion performance. Finally, the FNPRM proposes to eliminate the recordkeeping and retention rules for covered providers once the rules for implementing the RCC Act are effective.

The draft FNPRM establishes a comment deadline of June 4, 2018, with replies due on June 19, 2018.

FCC Seeks to Address Robocalls to Reassigned Phone Numbers

On March 23rd, the FCC released a [Second Further Notice of Proposed Rulemaking](#) (FNPRM) that seeks comment on ways to reduce calls placed by businesses and other legitimate callers to numbers that are no longer assigned to the individual that consented to receive those calls. The FCC proposes that one or more databases be made available to provide information businesses need to avoid making such calls, thereby reducing the number of unwanted calls to reassigned numbers.

The FNPRM first seeks comment on: (1) the information that callers who choose to use a reassigned numbers database need from such a database; (2) how to ensure that the information is reported to a database; and (3) the best approach to making that information available to callers. The FCC also seeks comment on operational aspects of a reassigned numbers database, including the type of information needed; how comprehensive and timely the data needs to be in order to be effective; possible restrictions or limitations on access to and usage of the database; and the best ways to ensure costs to use the database are minimized.

In addition, the FNPRM seeks comment on whether the FCC should: (1) require service providers to report reassigned number information to a single, FCC-designated database; (2) require service providers to report information to one or more commercial data aggregators; or (3) allow service providers to report information to commercial data aggregators on a voluntary basis. The Commission seeks comment on which service providers should be required to report data and whether certain service providers, such as rural providers, should be exempt from mandatory reporting.

For those service providers that would be subject to reporting requirements, the FCC seeks comment on the specific data that should be required, how often they should be required to report information, and the format in which they should be required to report it. The FNPRM also seeks comment on the costs and benefits of the reporting requirements and if there are any unique reporting burdens faced by small and/or rural service providers.

Comments on the FNPRM are due 45 days following publication in the Federal Register; replies are due 75 days after publication.

FCC to Consider Allowing A-CAM Carriers to Elect Incentive Regulation for Lower Speed Business Data Services

The FCC has released a [draft Notice of Proposed Rulemaking](#) (NPRM) that proposes to allow recipients of Alternative Connect America Cost Model (A-CAM) support to elect incentive regulation for their lower speed TDM business data services (BDS) offerings. Since A-CAM carriers that elect to move away from rate-of-return regulation for their BDS offerings will no longer need to provide cost-based pricing justification for their rates, the Commission proposes to relieve them of the obligation to conduct cost studies. The NPRM will be considered at the FCC's April 17th meeting.

The NPRM proposes to allow A-CAM carriers to convert to incentive regulation for their TDM transport and end user channel termination services at speeds at or below a DS3, as well as other generally lower speed non-packet based services that are commonly considered special access services. The Commission proposes to require the decision to elect incentive regulation be made at the holding company level for all of a carrier's study areas that receive A-CAM support.

The NPRM proposes to relieve electing A-CAM carriers of the obligation to perform cost studies. The Commission proposes to forbear from application of the cost assignment rules, including jurisdictional separations requirements, and also proposes to allow electing carriers to use GAAP for keeping their accounts.

The NPRM also proposes to allow electing A-CAM carriers to offer term and volume discounts and contract-based services for their lower capacity TDM BDS offerings. However, electing carriers would still be required to maintain generally available tariffed rates subject to incentive regulation for those services. The NPRM contains detailed proposals on how electing A-CAM carriers' BDS rates would be initially set and adjusted over time.

The NPRM proposes to require electing A-CAM carriers to remove their special access services from the NECA traffic-sensitive tariff but would allow electing carriers to remain in the tariff for their switched access services. Also, electing A-CAM carriers would remain subject to the switched access rate transition and Eligible Recovery rules for rate-of-return carriers.

The NPRM seeks comment on creating a competitive market test (CMT) to assess the availability of competitive options for transport and last mile services in electing A-CAM carrier service areas. Under the proposal, electing carriers' lower speed TDM BDS offerings would be relieved of pricing regulation in areas found competitive by the CMT.

The Commission also proposes to transition electing A-CAM carriers' packet-based and TDM BDS offerings at speeds above a DS3 away from pricing regulation within three years of adoption of an Order. Last, the NPRM proposes to allow other rate-of-return carriers receiving fixed support to opt into the same incentive regulation proposed for A-CAM carriers.

The draft NPRM establishes a comment deadline of 30 days following publication in the Federal Register, with replies due 45 days after publication.

FCC to Propose Rule to Ensure USF Support is Not Used for Purchases from Companies Posing a National Security Threat

The FCC has released a [draft Notice of Proposed Rulemaking](#) (NPRM) that would propose and seek comment on a targeted rule to ensure that USF funding is not spent on equipment or services from suppliers that raise national security concerns. The NPRM will be considered at the Commission's April 17th meeting.

Threats to the security of U.S. communications networks posed by certain equipment providers has been a longstanding concern in the Executive Branch and Congress. In particular, Congress has raised concerns about the long-term security risks associated with doing business with Huawei and ZTE, the top two Chinese telecommunications equipment manufacturers.

The NPRM proposes a rule that, going forward, no universal service support may be used to purchase or obtain any equipment or services produced or provided by any company posing a national security threat to the integrity of communications networks or the communications supply chain. The Commission expects that the proposed rule would limit USF funds both directly by the recipient as well as indirectly by any contractor or subcontractor of the recipient. Also, while the proposed rule would not apply to equipment already in place, the Commission anticipates that the rule would extend to upgrades of existing equipment or services.

The NPRM seeks comment on how best to implement the proposal, including: (1) the types of equipment and services that should be covered by the rule; (2) how companies that pose a national security threat should be identified; (3) how the FCC can ensure that USF recipients are able to learn which suppliers are covered by the rule; (4) how to enforce the rule; and (5) the costs and benefits of the proposed rule.

The draft NPRM establishes a comment deadline of 30 days following publication in the Federal Register, with replies due 60 days after publication.

RUS Opens FY 2018 Application Window for Rural Broadband Access Loans and Loan Guarantees

The Rural Utilities Service recently announced in the [Federal Register](#) that it is now accepting applications for the Rural Broadband Access Loans and Loan Guarantees Program (the Broadband Program) for fiscal year 2018. The deadline for filing an

application is September 30, 2018. RUS will publish on its website the amount of funding available once all budgetary appropriations have been completed.

During FY 2018, loans will be made available for the construction, improvement, and acquisition of facilities and equipment that will provide service at the broadband lending speed in eligible rural areas. The broadband lending speed is the minimum speed that applicants must propose to offer the customer and is 25/3 Mbps for both mobile and fixed service. Loans under the Broadband Program will not be made for less than \$100,000; the maximum loan amount that will be considered for FY 2018 is \$25 million.

Applications must be submitted through RUS's [online application system](#). All materials required for completing an application are included in the online system. Applications will be processed on a first come, first served basis. Every 90 days, RUS will conduct an evaluation of the submitted applications. During the evaluation period, applications will be ranked based on the percentage of unserved households that the applicant proposes to serve. RUS anticipates that it will conduct at least two evaluation periods for FY 2018.

RUS Opens FY 2018 Application Window for Distance Learning and Telemedicine Program Grants

The Rural Utilities Service recently announced in the [Federal Register](#) that it has opened the application window for its Distance Learning and Telemedicine (DLT) Grant Program for fiscal year 2018. The deadline for submitting an application is June 4, 2018. The minimum grant amount is \$50,000 and the maximum amount is \$500,000 for the fiscal year. Information on the program is available through RUS's [Distance Learning & Telemedicine Grants](#) webpage.

USAC Opens Mobility Fund Phase II Challenge Portal; FCC to Release Map of Presumptively Ineligible Areas April 10

USAC has announced the opening of the portal for the [Mobility Fund Phase II \(MF-II\) challenge process](#). The MF-II Challenge Process gives mobile providers, as well as state and local government entities, the opportunity to contest the coverage data used to determine initial eligibility for MF-II support. Using the MF-II portal, challengers can submit speed test measurements taken in areas initially deemed ineligible to demonstrate that existing coverage is below the 5 Mbps minimum speed benchmark. Mobile providers that serve a challenged area will have the opportunity to respond to a challenge by submitting their own speed test data and speed reduction reports through the portal. The portal officially opened March 29th and will remain open through August 27th. USAC will host a webinar on the challenge process on April 18th at 1:00 pm Eastern.

In addition, the FCC announced in a [Public Notice](#) that it intends to release a map on April 10th of areas presumptively ineligible for MF-II support due to qualifying, unsubsidized coverage reported by one mobile provider. The map will be available on the [FCC's MF-II webpage](#).

FCC Reporting Requirements

Apr. 12

MOSS ADAMS REGULATORY WEBCAST

8:30 am PT - 9:30 am MT - 10:30 am CT – 11:30 am ET

As part of Moss Adams' monthly regulatory compliance webcast series, we will discuss upcoming FCC, NECA, and USAC regulatory compliance reports that are due. Moss Adams will provide an overview of monthly reporting requirements followed by an opportunity for questions and answers. In addition, Moss Adams staff will discuss key FCC issues that have an immediate business impact.

May 1

FCC Form 499-Q: Telecommunications Reporting Worksheet

All telecommunications common carriers (wireline and wireless) that expect to contribute more than \$10,000 to federal universal service support mechanisms must file this quarterly form. The form contains revenue information from the prior quarter plus projections for the next quarter. Form 499-Q relates only to USF contributions. It does not relate to cost recovery mechanisms for TRS Fund, NANPA, and LNP that are covered in the annual form (FCC Form 499-A) that is due April 1.

May 1

IXC Geographic Rate Averaging and Rate Integration Certification

Non-dominant interexchange carriers (IXCs) that provide detariffed domestic interstate services must certify that they are providing such services in compliance with the FCC's geographic rate averaging and rate integration obligations pursuant to Section 254(g) of the Communications Act. An officer of the company must sign the annual certification letter under oath. Completed certifications should be filed in CC Docket No. 96-61 via the FCC's electronic filing system.

May 8

Lifeline Claims Reporting

Service providers that file certified reimbursement claims through USAC's E-File system by the eighth day of the month can receive payment for the claim at the end of the same month. Service providers that do not file by the eighth day of the month will receive payment the following month. Starting with the January 2018 data month (February 1, 2018 snapshot), all service providers were required to use the new Lifeline Claims System (LCS) online reimbursement process. Service providers can access the LCS online through the [National Lifeline Accountability Database \(NLAD\)](#). Detailed instructions are available by clicking on the "[Instructions](#)" link in the upper-right corner of the LCS interface.