

FCC FACT SHEET*

Connect America Fund

Order on Reconsideration – WC Docket No. 10-90

Background: 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 for broadband deployment, with a goal of preserving funds for more efficient projects with deployment to a greater number of lower-cost locations.¹ As part of the Capital Investment Allowance, the Commission adopted a rule prohibiting carriers from seeking universal service support for all capital expenses associated with any construction project that has average per-location costs above a company-specific “Maximum Average Per-Location Construction Project Limitation.”

On May 25, 2016, NTCA – The Rural Broadband Association (NTCA) filed a Petition for Reconsideration and/or Clarification of the portion of the *Rate-of-Return Reform Order* that adopts this capital construction limitation. The Commission received no oppositions or comments in response to NTCA’s Petition for Reconsideration.

Specifically, NTCA seeks reconsideration of how the construction limitation is applied and 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. NTCA therefore requests that, for the purpose of seeking universal service support, the rule only disallow the portion of a project’s expenses that exceed the average per-location threshold.

What the Order on Reconsideration Would Do:

- Grant NTCA’s petition with respect to the construction limitation.
- Amend the construction project limitation within the Capital Investment Allowance rule 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.
- Provide carriers additional flexibility to undertake new construction projects that exceed the limit without risk of losing all universal service support associated with the project.

* This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WC Docket No. 10-90, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs>).

¹ See 47 CFR § 54.303.

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

In the Matter of)
Connect America Fund) WC Docket No. 10-90
ETC Annual Reports and Certifications) WC Docket No. 14-58
Developing a Unified Intercarrier Compensation) CC Docket No. 01-92
Regime)

ORDER ON RECONSIDERATION*

Adopted: []

Released: []

By the Commission:

I. ORDER ON RECONSIDERATION

1. By this Order, we grant 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.1 We find 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.2 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

* This document has been circulated for tentative consideration by the Commission at its April open meeting. The issues referenced in this document and the Commission’s ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration by the Commission, the public interest would be served by making this document publicly available. The Commission’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

1 See Petition For Reconsideration and/or Clarification of NTCA–The Rural Broadband Association, WC Docket No. 10-90, et al., at 22-23 (filed May 25, 2016) (NTCA Petition for Reconsideration). NTCA seeks, in part, reconsideration of that portion of the Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3127-31, 3236-39, paras. 105-17 & App. B, § 54.303 (2016) (Rate-of-Return Reform Order) that adopts a capital construction limitation to ensure that carriers cannot obtain universal service support for excessive per-location construction investments. We received no oppositions or comments in response to this Petition for Reconsideration.

2 Rate-of-Return Reform Order, 31 FCC Rcd at 3236-39, paras. 105-17.

construction project with average per-location costs above a company-specific “Maximum Average Per-Location Construction Project Limitation.”³

3. NTCA seeks reconsideration of how the construction limitation is applied.⁴ 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.⁵ 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.⁶ 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.⁷ 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, we agree 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.”⁸ We find that NTCA’s proposed solution – retaining the average per-location construction limitation as a maximum universal-service reportable amount associated with a construction project – adequately preserves the Commission’s interests in promoting efficient use of universal service funds to maximize the number of high-cost locations with broadband-capable facilities while avoiding leaving some locations without service when they might be efficiently included within another deployment project. We therefore grant 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

³ *Id.* at 3128, para. 108, 3238-39, App. B, § 54.303(f).

⁴ NTCA Petition for Reconsideration, at 22-23. In its petition, NTCA also sought reconsideration and/or clarification of aspects of the *Rate-of-Return Reform Order* other than the new construction project limitation issue. We do not address those issues at this time.

⁵ *Id.*

⁶ See Letter from Michael R. Romano, Senior Vice-President—Industry Affairs and Business Development, NTCA—The Rural Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Feb. 3, 2017), at 2-3.

⁷ NTCA Petition for Reconsideration, at 22-23.

⁸ *Rate-of-Return Reform Order*, 31 FCC Rcd at 3129, para. 110.

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)⁹ 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.”¹⁰ The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹¹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹² 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

8. In this Order on Reconsideration, we amend 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 we expect 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 we anticipate that this rule will not affect a substantial number of carriers, we do not anticipate that it will affect a substantial number of small entities. Therefore, we certify 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 Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking to Congress

⁹ *See* § 5 U.S.C. S 601 *et. seq.*

¹⁰ 5 U.S.C. § 605(b).

¹¹ 5 U.S.C. § 601(6).

¹² 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹³ Small Business Act, § 15 U.S.C. § 632.

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 the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order on Reconsideration, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

13. 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.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary
Federal Communications Commission

APPENDIX A
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. 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:
