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SMALL ENTITY COMPLIANCE GUIDE

**Administrative Changes to Universal Service Fund
High-Cost and Lifeline Rules**

FCC 23-87

WC Docket Nos. 10-90, 23-328, 10-208, 14-58,

WT Docket No. 10-208

Released October 20, 2023

In accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, this Small Entity Compliance Guide (Guide) is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of this Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties, or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The Commission will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The Commission may decide to revise this Guide without public notice to reflect changes in the Commission's approach to implementing a rule, or it may clarify or update the text of the Guide. Please direct your comments, recommendations, or calls for further assistance to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

On October 20, 2023, the Commission released a Report and Order (*Administrative Order*) making several modifications to, and clarifications of, Commission rules to improve the administration of the Federal Communications Commission (FCC or Commission)'s Universal Service Fund (USF) high-cost program, and to a much lesser extent, the Lifeline program. These changes and clarifications enhance the program's efficiency and efficacy, better safeguard USF, and streamline annual reporting and certification requirements.¹

II. COMPLIANCE REQUIREMENTS

The rule changes and clarifications in the *Administrative Order* collectively apply to recipients receiving support through various high-cost funding mechanisms, and to a much more limited extent, to recipients of Lifeline support. We describe these requirements below.

A. Annual Reporting and Certification Requirements of High-Cost Support Recipients.

1. Simplification of Annual Reports and Certifications (47 CFR §§ 54.313(i), 54.314). High-cost support recipients will file annual reports and certifications with the Universal Service Administrative Company (USAC) only rather than with USAC and multiple entities.²

2. Alignment of Support Reductions for Failure to File Annual High-Cost Information and Certifications by Associated Deadlines (47 CFR §§ 54.313(j)(1), 54.314(d)(1)(iii), 54.316(c)(4)). The support reductions for an eligible telecommunications carrier's (ETC's) failure to certify its annual high-cost deployment information and make annual certifications by the associated deadlines will occur in the month immediately following the notice of support reduction to the ETC by USAC or as soon as feasible thereafter.³

3. Performance Measures Testing, Reporting, and Support Withholding (47 CFR § 54.313(a)(6), (j)(3)).

All high-cost support recipients serving fixed locations (including those in compliance with speed and latency requirements) must report and certify performance testing results on a quarterly basis, rather than annually, and must perform broadband performance testing one week out of each quarter.⁴ These support recipients must report and certify their quarterly performance testing results within two weeks, rather than within one week, after the end of the quarter in which the tests are conducted.⁵ First quarter testing results will be due April 15th, second quarter results will be due July 15th, third quarter results will be due October 15th, and fourth quarter results will be due January 15th.⁶ The Bureau will announce when quarterly reporting and certification will go into effect.⁷

The Wireline Competition Bureau (Bureau) will assess support recipients' compliance with program requirements based on annual testing results. If a support recipient is found noncompliant, it

¹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., WT Docket No. 10-208, Notice of Proposed Rulemaking and Report and Order, FCC 23-87 (Oct. 20, 2023), Erratum (WCB Feb. 13, 2024) (*Administrative Order*).

² *Id.* at 60-61, paras. 133-34.

³ *Id.* at 61-62, para. 135.

⁴ *Id.* at 62, para. 136.

⁵ *Id.* at 63, para. 138.

⁶ *Id.*

⁷ *Id.*

will have support withheld until it achieves a full quarter of compliance.⁸ Support reductions due to late filings will be assessed at the end of the fourth quarter and will be based on total number of days late divided by four, then rounded to the nearest whole number.⁹ When certification of deployed locations on March 1st may impede the carrier's ability to complete some of its testing, the Bureau may exercise discretion when assessing the scope of a carrier's compliance or when implementing support withholdings.¹⁰

4. Adoption of Uniform Grace Periods (47 CFR §§ 54.314(d)(2), 54.316(c)(3), (d)(4)). All high-cost support recipients that are permitted a one-time grace period to submit a filing under Commission rules must file within four business days of the relevant due date to take advantage of the grace period. For example, if the due date is day zero, then the day after the due date is day one of four.¹¹

5. Alignment of Deployment, Certification, and Location Reporting Deadlines for All Connect America Fund (CAF) Phase II Auction Support Recipients (47 CFR §§ 54.310(c), 54.316(b)(4), 54.316(c)(2)). All CAF Phase II auction support recipients (including recipients of support allocated through New York's New NY Broadband program) must meet uniform deployment milestones by deadlines occurring at the end of the specified calendar year (rather than the date the Bureau authorized receipt of support) and must meet annual certification and location reporting requirements as of March 1st.¹²

6. Certification Deadlines for the Bringing Puerto Rico Together Fund Stage 2 and the Connect USVI Fund Stage 2 fixed programs (47 CFR § 54.316(b)(7)). Recipients of support allocated through the Bringing Puerto Rico Together Fund stage 2 and the Connect USVI Fund stage 2 fixed programs must meet an annual certification deadline of March 1st.¹³

7. Reporting Period for Voice and Broadband Rate Certification (47 CFR § 54.313(a)(2), (a)(3)). Carriers submitting the annual FCC Form 481 certify compliance with both the annual voice and broadband pricing benchmarks adopted in the prior calendar year ending the last day of December.¹⁴

8. Process to Permit the Reporting and Certification of Late Locations (47 CFR § 54.316(d)). Carriers may report and certify locations that should have been reported for a prior reporting year, even after the reporting deadline for that year, in future annual deployment reports (late-reported locations) and count these locations toward their defined deployment obligations.¹⁵ Carriers submitting late-reported locations are subject to a support reduction based on the number of late-reported locations filed and the duration of time between when the location was due to be reported and when the location was actually reported.¹⁶

⁸ *Id.* at 62, para. 136.

⁹ *Id.* at 63, para. 140.

¹⁰ *Id.* at 62, para. 137.

¹¹ *Id.* at 64-65, para. 146.

¹² *Id.* at 65, para. 147.

¹³ *Id.*

¹⁴ *Id.* at 67, para. 150.

¹⁵ *Id.* at 67-68, para. 152.

¹⁶ *Id.* at 67, 70, paras. 152, 158.

Carriers reporting late-locations will not be subject to support reductions for late-reported locations under the following circumstances;

- the late-reported locations were due to be reported prior to the effective date of this rule change;¹⁷
- the late-reported locations were reported within a one-time four day grace period for amending an annual filing;¹⁸ or
- the late-reported locations were filed after the support recipient has demonstrated compliance with the final milestone.¹⁹

The support reduction for late-reported locations that do not qualify for these exceptions will occur in the next month immediately following the notice of support reduction to the eligible telecommunications carrier from USAC or as soon as feasible thereafter.²⁰

B. Streamlining Review of Rate-of-Return Local Exchange Carrier (LEC) Mergers (47 CFR §§ 51.909(a)(7), 51.917(c)).

1. Calculating Base Period Revenues. Section 51.917(c) of the Commission's rules is revised to provide guidance on calculating Base Period Revenues upon study area merger, consolidation, or acquisition. When rate-of-return study areas are merged with, consolidated with, or acquired by, another rate-of-return carrier, the new entity shall combine the Base Period Revenue and interstate revenue requirements of the merging study areas for purposes of calculating Eligible Recovery.²¹ In the case of a partial study area change, rate-of-return LECs shall allocate the Base Period Revenue and interstate revenue requirement levels of the partial study area based on the proportion of access lines acquired compared to the total access lines in the pre-merger study area of the remaining entity.²²

2. Setting New Rate Caps. Section 51.909(a)(7) of the Commission's rules is revised to establish procedures for setting new rate caps upon study area merger, consolidation or acquisition. For carriers that file their own tariffs, the new rate cap for each rate element shall be the weighted average of the preexisting rates in each of the affected study areas.²³ For merging rate-of-return LECs that participate in the National Exchange Carrier Association (NECA) traffic-sensitive tariff and that have to establish a single switched access rate for a rate element, the new consolidated rate, as determined by NECA pursuant to the rate bands in its traffic-sensitive tariff, shall be the new rate cap if the merged entity's CAF Intercarrier Compensation (ICC) support will not increase as a result of the merger by more than two percent above the amount received by the merging entities prior to the transaction, using the demand and rate data for the preceding calendar year.²⁴ The rate for each rate band will become the rate cap for the corresponding rate element in the merged study area.²⁵

3. Streamlined Waiver Petitions. Section 51.909(a)(7) of the Commission's rules also establishes a streamlined waiver process when certain conditions are met. If the new entity

¹⁷ *Id.* at 67-68, para. 152.

¹⁸ *Id.* at 70, para. 159.

¹⁹ *Id.* at 71, para. 160.

²⁰ *Id.* at 70-71, para. 159.

²¹ *Id.* at 74, para. 169.

²² *Id.*

²³ *Id.* at 74, para. 170.

²⁴ *Id.* at 75, para. 171.

²⁵ *Id.* at 75, para. 171.

participates in the NECA tariff and the impact of the rate banding increases CAF ICC support by more than two percent, the merging LECs must file a petition for waiver specifying the impact of the merger, acquisition, or consolidation on the new entity's rates and CAF ICC support.²⁶

Any petition for waiver should include information such as:

- A description of the merging study areas, or portions of study areas involved;
- The intrastate and interstate switched access demand for each rate element;
- The relevant pre-and post-merger intrastate and interstate switched access rates for the study areas involved, as proposed;
- The relevant pre-and post-merger intrastate and interstate switched access revenues, including the effects of interstate switched access revenue pooling, for the study areas involved;
- The effect on CAF ICC resulting from the merger; and
- A brief statement of the public interest benefits of the merger.²⁷

The Bureau will release a public notice announcing receipt of a waiver petition and seek comment.²⁸ The waiver will be deemed granted on the 60th day after the public notice is released if no opposition is filed, unless the Bureau or the Commission acts to prevent the “automatic” grant.²⁹ If an opposition is filed, the petition will not be eligible for the streamlined grant process and will instead be subject to the Commission's more general rules for waiver.³⁰

C. Acquisition of Exchanges by a CAF Broadband Loop Support (BLS) Recipient (47 CFR § 54.902).

Only transferred exchanges that are already eligible for CAF BLS are eligible for CAF BLS after their transfers.³¹ Where a rate-of-return carrier acquires exchanges from a price cap carrier, the acquired exchange will continue to be subject to the support obligations in place at the time that the exchange is acquired, including obligations associated with frozen and auction-based support.³²

D. Study Area Boundary Waivers (47 CFR § 36.4).

LECs seeking a change in study area boundary must file a petition for waiver notwithstanding any prior exemptions from such waiver requests. The Bureau or the Office of Economics and Analytics are permitted to accept study area boundary corrections without a waiver.³³

E. Quarterly Line Count Updates for CAF BLS Recipients (47 §§ 54.903(a)(2), 54.1305, 54.1306).

CAF BLS support recipients can no longer submit optional quarterly line count filings.³⁴ Accordingly, when submitting the number of working loops for each study to the NECA for the purpose of determining the Eligible Expense Adjustment, each incumbent local exchange carrier that is a rate-of-

²⁶ *Id.* at 75, para. 173.

²⁷ *Id.*

²⁸ *Id.* at 75-76, para. 174.

²⁹ *Id.* at 75-76, para. 174.

³⁰ *Id.* at 75-76, para. 174.

³¹ *Id.* at 76-77, para. 175.

³² *Id.*

³³ *Id.* at 77, para. 176.

³⁴ *Id.* at 79, para. 181.

return carrier not affiliated with price cap local exchange carriers no longer needs to update its information based on the information in the optional filing of quarterly line count data.³⁵ In addition, it cannot optionally update the other information submitted to NECA based on optional quarterly line count data.³⁶

F. Relinquishment of Eligible Telecommunications Carrier (ETC) Designation (47 CFR § 54.205).

Any ETC (including recipients of only Lifeline support) designated by a state authority and seeking to relinquish its ETC designation after the effective date of this rule must provide advance notice to the Commission and must inform the Commission of the state's decision to permit or deny such relinquishment by submitting the relevant state order or other document issued by the state within 10 days of such issuance.³⁷ These notices must be filed regardless of whether the ETC is currently receiving support.³⁸

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The rules adopted in the *Administrative Order* contain new and updated information collection requirements for recordkeeping and reporting associated with the receipt of universal service support, including high-cost support and to a much more limited extent, Lifeline-only support. The *Administrative Order* increases certain reporting obligations, including increased frequency of performance measure reports, a new process for accepting late-filed locations, and newly required notices of requests for, and grants of, relinquishment requests for state ETC designations (including Lifeline-only designations). It also modifies and clarifies certain report-related requirements by, for example, aligning certain deadlines and limiting the number of entities with which filings must be made. With the exception of the elimination of CAF-BLS support recipients' option to submit quarterly line count data, the *Administrative Order* does not eliminate reporting and record retention requirements currently applicable to ETCs, including the requirement to retain all records for at least 10 years from receipt of funding.³⁹ The details and specifics of the reporting and recordkeeping requirements adopted in the *Administrative Order* can be found in Section II of this guide under the Compliance Requirements.

IV. IMPLEMENTATION DATE

The rules and clarifications specified in the *Administrative Order* were effective May 10, 2024, except for those portions containing information collection requirements in sections 36.4, 54.205, 54.313(a)(2), (a)(3), (a)(6), (i), (j), 54.314(a) through (d), 54.316(a) through (d), 54.903(a)(2), and 54.1306 of the Commission's rules. These rules shall become effective after the Commission publishes a notice in the Federal Register of the Office of Management and Budget's approval of the Commission's rules, and the relevant effective date.

V. INTERNET LINKS

A copy of the *Administrative Order* is available at: <https://docs.fcc.gov/public/attachments/FCC-23-87A1.pdf>.

A copy of the Federal Register Summary of the *Administrative Order* is available at: <https://www.federalregister.gov/documents/2024/04/10/2024-06292/connect-america-fund-alaska-connect-fund-etc-annual-reports-and-certifications-telecommunications>

³⁵ 47 CFR § 54.1305.

³⁶ *Id.* § 54.1306.

³⁷ *Administrative Order* at 79, para. 183.

³⁸ *Id.* at 80, para. 183.

³⁹ 47 CFR § 54.320(b).