

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 Regime)	CC Docket No. 01-92
)	

SECOND COST SURROGATE WAIVER ORDER

Adopted: March 20, 2017

Released: March 20, 2017

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. By this Order, the Wireline Competition Bureau (Bureau), on its own motion, temporarily waives, to the extent detailed below, the requirements to use the cost surrogate method contained in sections 69.311 and 69.416 of the Commission’s rules to avoid distortive pricing effects that result from the application of the surrogate cost method in certain limited circumstances.¹ Specifically, in some cases, the surrogate cost method results in an unreasonable allocation of costs from the Special Access category to the new Consumer Broadband-Only Loop (CBOL) category. This waiver addresses the most significant market distortions caused by the use of the surrogate cost method and is consistent with the cost surrogate waiver the Bureau granted prior to the December 2016 tariff filings.²

II. BACKGROUND

2. In the *Rate-of-Return Reform Order*, the Commission adopted significant reforms to the rules governing the provision of universal service support to rate-of-return local exchange carriers (LECs).³ The Commission adopted a voluntary path under which rate-of-return carriers may elect model-based support for a term of 10 years in exchange for meeting defined build-out obligations.⁴ For carriers not electing model-based support, the Commission modernized the existing interstate common line support rules to provide support in situations where the customer no longer subscribes to traditional

¹ 47 CFR §§ 69.311, 69.416.

² See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Order, 31 FCC Rcd 13153 (WCB 2016) (*Cost Surrogate Waiver Order*); Petition For Reconsideration and/or Clarification of NTCA–The Rural Broadband Association, WC Docket No. 10-90, *et al.*, at 9, n.18 (filed May 25, 2016) (NTCA Petition for Reconsideration).

³ See *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 (2016) (*Rate-of-Return Reform Order*).

⁴ See *id.* at 3094-117, paras. 17-79.

regulated local exchange voice service, i.e., subscribers to stand-alone broadband service.⁵ The new support mechanism is known as Connect America Fund Broadband Loop Support (CAF BLS).

3. To implement the new support mechanisms, the Commission, among other things, revised certain cost allocation and tariffing rules for carriers to introduce supported CBOL service.⁶ Specifically, the Commission revised Part 69 of the Commission's rules to require rate-of-return carriers to move the costs of consumer broadband-only loops from the Special Access category to a new CBOL category.⁷ Because the costs of the facilities associated with the common line and the consumer broadband loop are very similar, the Commission developed a method for determining the cost of a CBOL using Common Line costs as a surrogate. Under this method, rate-of-return carriers use a 100 percent allocation of the Common Line costs to the interstate jurisdiction to identify the costs that must be moved from the Special Access category to the CBOL category.⁸ The costs shifted to the CBOL category are also an input into the determination of the amount of CAF BLS that a carrier not electing model-based support is eligible to receive.⁹

4. The surrogate method was intended to identify and segregate the broadband-only loop investment and expenses from other special access costs currently included in the Special Access category¹⁰ and also to preclude cross-subsidization.¹¹ The Commission indicated that it would monitor implementation of this requirement to ensure that the rules are working as intended.

III. DISCUSSION

5. Generally, the Commission's rules may be waived under section 1.3 for "good cause shown."¹² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest, which may be demonstrated by showing that (a) special circumstances warrant a deviation from the general rule; and (b) such deviation will serve the public interest.¹³ In making these determinations, the Commission may consider evidence of hardship, equity, and more effective implementation of overall policy on an individual basis.¹⁴

6. Prior to the December 2016 tariff filings, the Bureau recognized that, in limited situations, the surrogate cost method would over-allocate costs from the Special Access category to the new CBOL category.¹⁵ Application of the method in these circumstances would have reduced special access rates more than intended and would have increased the CBOL revenue requirement.¹⁶ In the worst case scenario, the costs being shifted would have reduced the special access revenue requirement to zero.¹⁷ To mitigate these distortive effects, the Bureau, for the December 2016 tariff filing, waived

⁵ See *id.* at 3117-57, paras. 80-187.

⁶ See *id.* at 3157-62, paras. 188-204.

⁷ *Id.* at 3158-59, para. 191; 47 CFR §§ 69.311, 69.416.

⁸ *Id.*

⁹ *Rate-of-Return Reform Order*, 3920-21, para. 88; 47 CFR § 54.901(a).

¹⁰ The costs remaining in the special access category include those related to business services, such as DS1 and DS3 other wide-band services, and the costs for Digital Subscriber Line (DSL) service that could be tariffed.

¹¹ *Rate-of-Return Reform Order*, 31 FCC Rcd at 3158-59, para. 191.

¹² 47 CFR § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹³ *Northeast Cellular*, 897 F.2d at 1166.

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ *Cost Surrogate Waiver Order*, 31 FCC Rcd at 13154, para. 5.

¹⁶ *Id.*

¹⁷ *Id.*

sections 69.311 and 69.416 to give rate-of-return LECs the option to limit the costs removed from the Special Access category “to the amount only affecting broadband transmission rates” and, concurrently in such circumstances, limited such carriers’ CBOL revenue requirement to costs identified in such a manner.¹⁸

7. The process for establishing the amount of CAF BLS a carrier will receive for the 2017-18 tariff year begins with carriers filing projected cost data for the upcoming period on or before March 31, 2017.¹⁹ Without Commission action, the adverse effects noted in the *Cost Surrogate Waiver Order* would again be present.²⁰ We accordingly find that good cause exists to grant a limited waiver of the rules requiring rate-of-return carriers to use the surrogate cost method for the 2017 annual access charge tariff filing, and any later tariff filings related to the development of the CBOL revenue requirement, when the special circumstances described below are present.

8. Use of the surrogate cost method in a way that significantly affects non-Digital Subscriber Line special access rates would be inconsistent with the public interest because it would introduce distortive pricing effects unrelated to the provisioning of broadband services and would be inconsistent with the goal of just and reasonable rates and rate stability over time. Thus, as we concluded for the December 2016 tariff filing, we conclude that the policy underlying the Commission’s rule would be better served by a limited waiver than by strict application of the rule for the 2017 annual access charge tariff filing, and any later tariff filings related to the development of the CBOL revenue requirement, until the Commission acts on the pending petition for reconsideration addressing this issue. Accordingly, as an exercise of the Bureau’s delegated authority, we hereby waive sections 69.311 and 69.416 of the rules in cases where use of the surrogate cost method would result in unintended rate reductions. This limited waiver will apply in circumstances in which subtraction of surrogate CBOL costs (as defined in Part 69) from a carrier’s Special Access category would result in the need to reduce special access rates other than broadband transmission rates associated with provision of retail broadband Internet access service. In such cases, the carrier will have the option to limit the costs subtracted from the Special Access category to the amount only affecting those broadband transmission rates, pending further consideration of the surrogate cost rules. As a condition of this waiver, we require carriers electing this option to limit their CBOL revenue requirement reported to the Universal Service Administrative Company for CAF BLS purposes to this amount.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to sections 1, 5, 201-202, 251, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 155, 201-202, 251, 254, and sections 0.91, 0.291 and 1.3 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 1.3, and pursuant to the delegation of authority in footnote 413 of the *Rate-of-Return Reform Order*, sections 69.311(b) and 69.416(b) of the Commission’s rules, 47 CFR §§ 69.311(b), 69.416(b), are temporarily WAIVED to the extent and under the specific circumstances specified herein.

¹⁸ *Id.* at 13155, para. 6.

¹⁹ *Rate-of-Return Reform Order*, 31 FCC Rcd at 3167, para. 187; 47 CFR § 54.903(b)(3).

²⁰ See *Cost Surrogate Waiver Order*, 31 FCC Rcd at 13154-55, paras. 5-6.

10. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), that the Order SHALL BE EFFECTIVE upon RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief, Wireline Competition Bureau