



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10-90; FCC 23-118; FR ID 198698]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) defers the commencement of the next five-year deployment obligation term for legacy rate-of-return carriers receiving Connect America Fund Broadband Loop Support (CAF BLS) in 2024 until January 1, 2025, while it considers general program reforms.

DATES: The Commission defers the commencement of the next five-year deployment obligation term for legacy rate-of-return carriers receiving CAF BLS in 2024 effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For further information, please contact, William Layton, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, at William.Layton@fcc.gov or 202-418-7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order (Order) in WC Docket No. 10-90; adopted on December 26, 2023, and released on December 27, 2023. The full text of this document is available at the following Internet address:

<https://www.fcc.gov/document/fcc-defers-next-deployment-term-legacy-high-cost-carriers>.

I. INTRODUCTION

1. The Commission hereby defers the commencement of the next five-year deployment obligation term for legacy rate-of-return carriers receiving CAF BLS in 2024 until January 1, 2025, while it considers general program reforms in the ongoing *Notice of Proposed Rulemaking (NPRM)*, 88 FR 56579, August 18, 2023, proceeding. Legacy carriers will remain subject to the Commission's rules, requiring the offering of broadband service at actual speeds of at least 25 Mbps downstream/3 Mbps upstream to the previously determined number of unserved locations under the current five-year term that

ends on December 31, 2023. Deferring the commencement of the next term will maintain the *status quo* as the Commission considers whether to modify deployment obligations for CAF BLS recipients going forward, allowing the Commission to take into account the effect of awards for broadband deployment pursuant to the Broadband Equity, Access, and Deployment Program (BEAD Program) or other Federal programs.

II. DISCUSSION

2. The Commission defers the commencement of the next deployment obligation term for CAF BLS recipients by one year, until January 1, 2025, as described in the *NPRM*. The deferral will allow the Commission to address the future budget and deployment obligations for CAF BLS carriers and give the Commission additional time to evaluate the impact of BEAD Program and other Federal and state broadband program commitments made by eligible providers. This action by no means releases legacy carriers from their deployment commitments by the end of 2023 under the Commission’s rules.

3. The Commission agrees with those commenters supporting the deferral of the next deployment obligation term until January 1, 2025. As NTCA—The Rural Broadband Association (NTCA) states, “[t]his should afford time to determine with greater precision where BEAD and other programs impose enforceable commitments of their own, leaving it clear what remaining locations could then be served at higher levels leveraging [CAF BLS] resources.” Because the “size, characteristics, and broadband needs of the rural service areas . . . will not be determinable for some time,” the Commission should “monitor broadband deployment in the remaining [CAF BLS/high-cost loop support] areas for at least one year before embarking upon the consideration of potential changes . . . deployment obligations.” Given the additional time needed to “issue the necessary legacy program revision orders, the next five-year term for CAF BLS support should begin no later than January 1, 2025.”

4. The sole commenter objecting to a deferment, the Nebraska Public Service Commission, states it will delay “the deployment of broadband infrastructure improvement in these areas.” The Commission agrees with NTCA, however, that the “benefits of greater coordination and potential relief for the future [Universal Service Fund] budget outweigh” such concerns. Although the Commission previously has imposed specific broadband deployment obligations on CAF BLS support recipients, it concludes that such requirements are not in the public interest during the deferral period. In particular,

broadband deployment obligations for CAF BLS support recipients have reflected a carefully-calibrated balancing of measurable broadband deployment objectives coupled with appropriate carrier flexibility, and the record does not reveal a viable way of similarly accommodating those interests in a deferral period. The Commission has recognized that carriers need to plan their broadband deployments. Forging ahead with the next deployment obligation term under the current rules, or applying other deployment obligations specific to a deferral term, even as the Commission considers significant changes, would undermine the viability of that planning given that both the support levels and ultimate deployment obligations would be uncertain over the relevant time horizon. The Commission also has recognized rate-of-return CAF BLS support recipients' need for flexibility in implementing the associated broadband deployment obligations, reflected, for example, in our decision to give those carriers flexibility in how they spread their deployment efforts out over the course of a deployment term, and in our actions to ensure those carriers have a full five-year deployment term to fulfill those deployment obligations. The record does not reveal a way to similarly achieve those objectives as part of deployment obligations for CAF BLS support recipients in 2024, while the Commission considers future reforms in that regard. Such near-term deployment obligations for CAF BLS support recipients also could lead to the inefficient allocation of resources in the event that broadband deployment obligations would require them to deploy facilities that could not be used efficiently—or at all—to achieve any revised broadband deployment obligations that the Commission might adopt. Accordingly, the Commission finds the better course is to maintain the *status quo* pending the outcome of the rulemaking proceeding.

5. The Commission emphasizes, notwithstanding this action, CAF BLS recipients, including those that were not authorized for Enhanced Alternative Connect America Cost Model (Enhanced A-CAM), remain subject to the current December 31, 2023, term deadline and must satisfy their broadband service location coverage requirements by that date. Further, CAF BLS recipients not authorized for Enhanced A-CAM remain subject to the Commission's reporting and certification requirements, including the reporting of newly served locations in the High Cost Universal Broadband portal, and the Commission's broadband network performance testing and certification requirements. Legacy carriers remain eligible to receive high-cost support during the deferral period to cover their ongoing eligible costs subject to the Commission's monthly per-line cap support amount. Carriers are also permitted, but not

required, to expand their broadband service coverage to unserved locations during the deferral period and are expected to at least maintain their coverage footprint as of December 31, 2023, as the Commission considers future deployment obligations.

III. PROCEDURAL MATTERS

A. Paperwork Reduction Act

6. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any new or modified 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

7. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this final action is “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

8. *Effective Date.* The Commission concludes that good cause exists to make the Order effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act. Agencies determining whether there is good cause to make effective an order less than 30 days after Federal Register publication “should balance the necessity for immediate implementation against principles of fundamental fairness, which require that all affected persons be afforded reasonable time to prepare for the effective date of is ruling.” In this action, the Commission is deferring the commencement of the next deployment obligation term, which would commence on January 1, 2024, but for the action taken here. The Order therefore does not impose new rule obligations that would require preparation by legacy rate-of-return carriers but instead delays the commencement of existing requirements while the Commission considers rule changes in the ongoing rulemaking proceeding. Accordingly, given the timing of the next deployment obligation term and that deferment will not require advanced preparation by carriers, the Commission finds good cause exists to make the Order effective upon publication of a summary in the Federal Register.

9. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires an agency to prepare a regulatory flexibility analysis for notice-and-comment rulemakings, unless the agency certifies the proposed or final rule(s) “will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 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 concerns” under the Small Business Act. A “small business concern” is one that: (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).

10. As required by the RFA, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the *NPRM*, released in July 2023. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. The two statutorily-mandated criteria to be applied in determining the need for RFA analysis are (1) whether the proposed rules, if adopted, would have a significant economic effect, and (2) if so, whether the economic effect would directly affect a substantial number of small entities. For the reasons discussed below, the Commission has determined that the rules and policy changes adopted in the Second Report and Order will not have a significant economic impact on a substantial number of small entities and has prepared this Final Regulatory Flexibility Certification (FRFC).

11. The Order defers the commencement of the next five-year deployment obligation term, until January 1, 2025, for those cost-based rate-of-return carriers receiving CAF BLS. Legacy carriers will remain subject to the Commission’s rules, requiring the offering of broadband service at actual speeds of at least 25 Mbps downstream/3 Mbps upstream to the previously determined number of unserved locations under the current five-year term that ends on December 31, 2023. This will maintain the *status quo* as the Commission considers general program reforms in the *NPRM* proceeding, including whether to modify deployment obligations for CAF BLS recipients going forward. Because this action delays the commencement of deployment obligations already provided for under the Commission’s rules, it will not cause any significant economic impact on providers, including those which are small entities.

12. Accordingly, based on the Commission’s application of the two statutorily-mandated

criteria to the rules adopted in the Order, it concludes that the adopted rules and policy changes will not have a significant economic impact on a substantial number of small entities. The Commission therefore certifies that the rules and policy changes adopted in the Order will not have a significant economic impact on a substantial number of small entities.

13. The Commission will send a copy of the Order, including a copy of the FRFC, in a report to Congress pursuant to the Congressional Review Act. In addition, the Order and the FRFC will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the Federal Register.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 214, 218-220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 218-220, and 254, and §§ 1.1, 1.3, and 1.425 of the Commission's rules, 47 CFR 1.1, 1.3, and 1.425 the Order IS ADOPTED. The Order SHALL BE EFFECTIVE upon publication of the text or summary in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene Dortch,

Secretary.

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