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FCC Takes Action on USF Issues

- **New Rules on Allowed Investments and Expenses for USF and Interstate Ratemaking Purposes**
- **Additional ACAM Support**
- **Temporary Amelioration of Impact of Budget Control Mechanism and Other Changes to Current USF**
- **Proposed Rulemaking on Further Changes to USF**

On March 23, 2018, the Federal Communications Commission adopted an order intended to ensure that high-cost universal service support provided to eligible telecommunications carriers (ETCs) is used only for the provision, maintenance, and upgrading of facilities and services for which the high-cost support is intended. The rules will go into effect within 30 days of Federal Register publication (which we expect to be in the very near future) except for unspecified rules requiring Paperwork Reduction Act (PRA) approval, which will await such approval before going into effect. The reforms are intended to ensure that the investments and expenses that rate-of-return carriers recover through high-cost universal service support and interstate rates are reasonable. They are intended to clarify the extent to which particular investments and expenses are recoverable through federal high-cost support and interstate rates.

The FCC also addressed the short term inadequacy of USF high-cost support for rate of return carriers as well as proposing a new rulemaking to make further changes to the rate of return high-cost USF mechanism.

Expenses Disallowed from Recovery from High Cost Support and Inclusion in the Interstate Rate Base

The FCC is codifying the existing prohibition on recovery from the high-cost program and inclusion in the interstate rate base the following types of expenses:

Personal Expenses: The new rules include the existing prohibition on recovery of the personal expenses of employees, board members, family members of employees and board members, contractors, or any other individuals affiliated with the ETC. These expenses include but are not limited to: personal expenses for personal travel, personal vehicles, housing, such as rent, mortgages, or housing allowances, childcare, employee gifts, and entertainment-related expenses including food and beverage, regardless of whether such expenses are paid directly by the individual or indirectly by the carrier in the form of allowances or gifts. Furthermore, the FCC is serious about these expenses being excluded and has cautioned recipients of high-cost support that recovering these types of expenses from high-cost support may constitute outright fraud, waste, and abuse of the Fund which could subject employees, executives, and board members to **personal civil and criminal liability**.

Expenses Unrelated to Operations: Also excluded from recovery are political contributions, charitable donations, scholarships, membership fees and dues in clubs and organizations (including trade associations, chambers of commerce and bar associations), sponsorships of conferences or community events, and penalties or fines for statutory or regulatory violations, penalties or fees for late payments on debt, loans, or other payments.

Corporate Luxury Goods: Artwork and other objects which possess aesthetic value, and corporate aircraft, watercraft, and other vehicles, with a limited exception, are excluded from recovery. The new rules also codify the existing prohibitions on using high-cost support for tangible luxury goods, including consumer electronics for personal use, and tangible property used for entertainment purposes. In addition, kitchen appliances are unrecoverable with limited exceptions.

Carriers are free to attempt to rebut the FCC's presumption that these expenses are excludable for interstate rate recovery by showing particular factual circumstances but cannot recover for such costs absent a particularized showing. The showing involves rebutting the presumption that the investment and expenses are not used and useful in the ordinary course of business and not used and useful unless customary for similarly situated companies. In the event of an audit or other investigation, the carrier bears the burden of demonstrating the investments and expenses are used and useful despite the presumption that they are not.

Compliance

Cost Consultants and Consulting Firms: The FCC's new rules requires Rate of Return ETCs to identify on their annual FCC Form 481 (Carrier Annual Reporting Data Collection Form) their cost consultants and cost consulting firms, or other third parties, if any, used to prepare cost studies or other calculations used to calculate high-cost support for their submission. The FCC believes that by a carrier identifying its cost consultants and cost-consulting firms, NECA, the Commission, and USAC will be better able to identify and rectify patterns of noncompliance, and potentially fraud, during audits.

Additional A-CAM Support

In the Order, the FCC instructed the Wireline Competition Bureau to offer additional support up to \$146.10 per-location to all carriers that accepted the revised offers of Alternative Connect America (A-CAM) model-based support. Under the revised offer, all locations with costs above \$52.50 per location will be funded up to a per-location funding cap of \$146.10, and the Bureau will adjust deployment obligations 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.

Fixes to and Clarifications of the Current USF Mechanism

The FCC also addressed issues on Reconsideration of the Rate of Return Reform Order released in 2016. The issues granted by the FCC include the following:

1. Eliminating the effect of the budget control mechanism for the period of the current budget year (from June 2017 to July 2018).
2. Directing NECA to calculate each carrier's OpEx limitation for the following calendar year.

3. Amending Section 54.1308(a)(4) to include CBOLs in the calculation of each carrier's corporate expense limitation.
4. Clarifying that when any entity that is not a Rate of Return ("RoR") carrier acquires an exchange from a RoR carrier, section 54.902(c) applies and the carrier will receive model-based support.

Notice of Proposed Rulemaking

The FCC is seeking comment on a number of issues, including but not limited to, the following: 1) Revising the high-cost budget for RoR carriers and the appropriate level of support; 2) extending new model offers to carriers through the "glide path" approach for those willing to accept lower support amounts in exchange for increased certainty of funding or for carriers for whom model support would exceed legacy support (Paras. 117 and 145); 3) providing additional funding to A-CAM carriers using a per-location funding cap of \$200; 4) reducing the \$250/line per month limit on USF support; 5) replacing the 100 percent overlap process with a different mechanism; 6) combining HCLS and CAF/BLS into a single mechanism 7) means-testing the USF high-cost program; 8) eliminating or modifying the Opex and Capex limitations; 8) changing the timing of certain data filings, and other proposals.

Please contact your GVNW Consultant or Steve Gatto (830.895.7226), sgatto@gvnw.com with any additional questions you may have about the new Rate of Return rules.