

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

**PETITION FOR RECONSIDERATION
MADISON TELEPHONE COMPANY**

Pursuant to section 1.429 of the Federal Communications Commission’s (“FCC” or “Commission”) rules, 47 C.F.R. § 1.429, Madison Telephone Company (“Madison” or the “Company”) hereby submits this petition for reconsideration (“Petition”) of the Commission’s Order on Reconsideration, and Further Notice of Proposed Rulemaking released on March 30, 2016).¹

I. INTRODUCTION

In the *Rate-of-Return Reform Order*, the FCC left intact—and did not even address—Section 54.305(b) of the Commission’s rules, otherwise known as the “parent trap” rule, which governs how high-cost Universal Service Fund support (“USF”) is handled when exchanges are sold or transferred.² As demonstrated herein, modifications made by the *Rate-of-Return Reform Order* to FCC rules governing USF for rate-of-return carriers has made Section 54.305(b)

¹ 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 (rel. March 30, 2016) (“*Rate-of-Return Reform Order*”).

² 47 C.F.R. § 54.305(b). This rule states in part that “any carrier subject to the provisions of this paragraph shall receive support pursuant to this paragraph or support based on the actual costs of the acquired exchanges, whichever is less.” *Id.*

unnecessary. Further, as has been clearly demonstrated in the record over the past several years, the purpose of the parent trap rule has long been fulfilled. The sweeping reforms made to USF in the *Rate-of-Return Reform Order* provide further evidence that the rule is no longer needed and put the “last nail in the coffin” of this outdated rule.

Immediate elimination of this rule will serve the public interest. First, it will provide clarity for the few rate-of-return carriers currently subject to the rule as to how the rule impacts them under the reformed mechanisms before the Alternative Connect America Cost Model (“A-CAM”) elections are made later this year; second, it will produce the appropriate incentives for carriers contemplating future sales or transfers of exchanges. Accordingly, Madison respectfully requests that the Commission reconsider its omission of addressing the parent trap rule in the *Rate-of-Return Reform Order* and act immediately to eliminate it.

II. GOOD CAUSE EXISTS FOR RECONSIDERING THE *RATE-OF-RETURN REFORM ORDER* TO ELIMINATE THE PARENT TRAP RULE

A strong record is already established supporting the elimination of the parent trap rule.³ According to the *Partner June 1, 2015 Ex Parte*, “key FCC officials” were urged to eliminate this outdated rule even during the development of the *Rate-of-Return Reform Order*.⁴

Unfortunately, however, the rule was left intact. Accordingly, by acting favorably on this

³ See, e.g., Letter from John Kuykendall, JSI on behalf of Dickey Rural Networks to Marlene H. Dortch, Secretary, FCC, Notice of *Ex Parte* Presentation, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337 (June 17, 2010) (Dickey Rural Networks discussing filing a petition to seek forbearance from the parent trap rule which would enable the unserved areas in the two acquired exchanges to receive broadband); Letter from Kenneth C. Johnson, Herman & Whiteaker, LLC on behalf of Partner Communications Cooperative (“Partner”) to Marlene H. Dortch, Secretary, FCC, Notice of *Ex Parte* Presentation, WC Docket No. 10-90 (June 1, 2015) (“*Partner June 1, 2015 Ex Parte*”) (“Partner has consistently argued that the parent trap rule no longer serves its original purpose (discouraging the sale of exchanges and controlling high-cost fund growth) and that it would be in the public interest to eliminate the outdated rule”).

⁴ See *Partner June 1, 2015 Ex Parte* at 1.

Petition, the Commission can advance the public interest by eliminating this outdated rule and its negative consequences.

A. Revisions to FCC Rules Make the Parent Trap Rule Unnecessary

Section 54.305(b) (the parent trap rule) of the Commission's rules states,

Beginning January 1, 2012, any carrier subject to the provisions of this paragraph shall receive support pursuant to this paragraph or support based on the actual costs of the acquired exchanges, whichever is less. Except as provided in paragraph (c) of this section [which applies if a carrier has entered into a binding agreement to buy or acquire exchanges from an unaffiliated carrier prior to May 7, 1997], a carrier that acquires telephone exchanges from an unaffiliated carrier shall receive universal service support for the acquired exchanges at the same per-line support levels for which those exchanges were eligible prior to the transfer of the exchanges.⁵

Thus, according to Section 54.305(b), if a rate-of-return carrier acquires exchanges from a price cap carrier, the rate-of-return carrier would receive universal service support for the acquired exchanges “at the same per-line support levels for which those exchanges were eligible prior to the transfer of the exchanges” or “support based on the actual costs of the acquired exchanges, whichever is less.”

The parent trap rule applies to high cost loop support (“HCLS”), not ICLS.⁶ Prior to the release of the *Rate-of-Return Reform Order*, Sections 54.902(b) and (c)⁷ specified how ICLS should be handled when a rate-of-return carrier acquired exchanges from a

⁵ 47 C.F.R. § 54.305(b). According to 47 C.F.R. § 54.305(a), these provisions do not apply to a price cap carrier or a rate-of-return carrier affiliated with a price cap carrier.

⁶ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 at note 444 (2011) (“*USF/ICC Transformation Order*”); *aff’d sub nom., In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). The parent trap rule used to apply to local switching support (“LSS”). LSS, however, is no longer impacted by the parent trap rule due to the elimination of LSS as a standalone mechanism. See *USF/ICC Transformation Order* at para. 257. Limited recovery of the costs previously associated with LSS is now recovered through CAF-ICC. *Id.*

⁷ 47 C.F.R. §§ 54.902(b) & (c).

price cap carrier. Accordingly, both rules worked in tandem. Specifically, Section 54.902(b) addressed how ICLS was to be handled if a rate-of-return carrier purchased exchanges from a price cap carrier and incorporated the exchanges into the rate-of-return carrier's existing study areas. Section 54.902(c) addressed how ICLS was to be handled if a rate-of-return carrier purchased exchanges from a price cap carrier and the exchanges were not incorporated into the rate-of-return carrier's existing study areas.

The *Rate-of-Return Reform Order*, however, modified Sections 54.902(b) and (c) in such a way that 54.305(b) is no longer needed. These sections have been revised as follows:

- Section 54.902(b) now states that if a rate-of-return carrier acquires exchanges from a price cap carrier, “the exchanges shall receive the same amount of support and be subject to the same public interest obligations as specified in Section 54.310 [CAF for Price Cap Territories - Phase II] or Section 54.312 [CAF for Price Cap Territories - Phase I], as applicable.”
- Section 54.902(c) now specifies that if an entity other than a rate-of-return carrier acquires exchanges from a rate-of-return carrier, “the carrier will receive model-based support and be subject to public interest obligations as specified in Section 54.310.”

Accordingly, under the revised Section 54.902(b), it is clear that a rate-of-return carrier that purchases exchanges from a price cap carrier will receive either the same amount of CAF Phase I or Phase II support that was being received by the price cap carrier. Contrary to what is specified in the parent trap rule, this support will be received

regardless of whether support based on the actual costs of the acquired exchanges is “less than” the CAF Phase I or Phase II support received by the price cap carrier.⁸

Further, unlike the previous operation of Sections 54.305(b) and 54.902(b) which worked in tandem, ICLS (which will now become Connect America Fund Broadband Loop Support (“CAF-BLS”)) will not be distributed for the acquired exchanges in these situations. There is also now no distinction between whether or not the acquired exchanges are incorporated into the acquiring carrier’s study area although the parent trap rule continues to contemplate situations where the acquired exchanges may be incorporated into an existing rural incumbent local exchange carrier study area.⁹ Given these revised rules which no longer work in tandem with the parent trap rule and the provision in Section 54.902(d) which states in part, “[t]his section does not alter any Commission rule governing the sale or transfer of exchanges . . .”, it is imperative that the Commission eliminate the parent trap rule to ensure that it is clear that there are no conflicts and that the revised rules are implemented as intended.

B. The Purpose for Having the Parent Trap Rule No Longer Exists

Section 54.305(b) was designed to “discourage carriers from transferring exchanges merely to increase their share of universal service support.”¹⁰ This purpose has been long fulfilled, and reforms to the high-cost universal service support program has made this purpose obsolete.

⁸ Indeed, a possible conflict may exist given that Section 54.902(d) states, which, it would seem, would refer to the “less than” provision in Section 54.305(b).

⁹ 47 C.F.R. § 54.305(b).

¹⁰ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8942-43 (1997) (subsequent history omitted).

As explained above, revisions to Section 54.902(b) require that price cap exchanges acquired by rate-of-return carriers continue to receive the same amount of CAF Phase I or Phase II support. Accordingly, rate-of-return carriers cannot “increase their share of universal service support” by purchasing price cap exchanges in rural high-cost areas. Further, revisions were also made to Section 54.902(a) which now specifies how CAF BLS (formerly ICLS) will be distributed when a rate-of-return carrier acquires exchanges from another rate-of-return carrier. With these revised rules in place along with the fact that CAF BLS and HCLS will be subject to a “self-effectuating mechanism to control total support” distributed to these programs,¹¹ there are no incentives for rate-of-return carriers to “increase their share of universal service support” when acquiring exchanges from other rate-of-return carriers.

C. The Public Interest Will Be Advanced by Eliminating the Parent Trap Rule

As Partner has aptly stated, the “parent trap rule has created a ‘neglected stepchild’ subset of rural, high-cost exchanges that, in essence, falls neither under price cap rules nor under rate-of-return rules.”¹² This is certainly the case with the issuance of the *Rate-of-Return Reform Order*.

First, very few rate-of-return carriers are even subject to the parent trap rule. According to the most recent report produced by NECA, currently there are only 37 study areas with acquired exchanges.¹³ Some of these are eligible to elect A-CAM support. However, with the parent trap rule left intact, it is unclear how the acquired exchanges will be treated if these

¹¹ *Rate-of-Return Reform Order* at para. 6.

¹² Letter from Kenneth C. Johnson, Bennet & Bennet, PLLC on behalf of Partner Communications Cooperative (“Partner”) to Marlene H. Dortch, Secretary, FCC, Notice of *Ex Parte* Presentation, WC Docket No. 10-90 (Oct. 29, 2014) (“*Partner Oct. 2014 Ex Parte*”)

¹³ Madison observes that the list of companies subject to the parent trap rule has increased only slightly over the past several years which could be due to the negative impact of the parent trap rule. *See* Appendix A.

carriers elect A-CAM support. Accordingly, it must be eliminated as it is completely obsolete in the A-CAM universe and should not apply to companies that elect the A-CAM.

Assuming that some of those companies take the A-CAM, there will remain an even smaller number under modified rate-of-return where the parent trap rule would apply. As noted above, the CAF-BLS and HCLS will be under new budget constraints which should address any concerns the Commission may have regarding impact to USF when the parent trap rule is eliminated. These budget control mechanisms will ensure that no additional financial burden will be placed on USF by eliminating the Parent Trap rule. Indeed, only a miniscule equitable distribution of USF will remain in order to continue the operations, maintenance, and deployment of advanced service networks. , which is occurring anyway due to provisions in the *Rate-of-Return Reform Order* such as the requirement for NECA to “rebase” the cap on HCLS.¹⁴ Because this “rebasing” is to occur following the election of model-based support which is to occur later this year, now would be the most appropriate time to eliminate this outdated rule.

Additionally, the *Rate-of-Return Reform Order* also mandates build-out requirements which will apply in the acquired exchanges further necessitating the need for support which is now being denied due to the operation of the parent trap rule.

Furthermore, the parent trap rule perpetuates a “disincentive to consolidation in the rural industry.”¹⁵ The sweeping reforms initiated by the *Rate-of-Return Reform Order* will require that all options for acquiring and transferring exchanges be afforded rate-of-return companies without the complications and limitations imposed by the parent trap rule. Rate-of-return carriers need

¹⁴ *Rate-of-Return Reform Order* at para. 154 (“In the first annual HCLS filing following the election of model-based support, NECA shall calculate the amount of HCLS that those carriers would have received in the absence of their election, subtract that amount from the HCLS cap, then recalculate HCLS for the remaining carriers using the rebased amount”).

¹⁵ *Partner Oct. 2014 Ex Parte* at 1.

the ability to buy and sell exchanges when it makes sense and when the transaction will yield cost and operating efficiencies that will ultimately help deploy broadband to unserved areas. The parent trap rule is an obsolete rule that until eliminated, rate-of-return carriers must take into account when making these considerations.

III. CONCLUSION

With price cap carriers newly transitioned to the CAF and rate-of-return carriers currently choosing between the A-CAM and legacy rate-of-return, there is simply no place in the current regulatory treatment of telephone companies for an outdated and ineffective rule. The parent trap rule is completely unnecessary for rate-of-return carriers who elect the A-CAM, and it is potentially harmful for those who remain on modified rate-of-return. The *Rate-of-Return Reform Order* failed to address the parent trap rule entirely, and it certainly failed to reach the only reasonable conclusion which is to eliminate it. There is still time to reconsider this important omission by granting this petition and eliminating this obsolete rule which has no place in the system of reforms adopted in the *Rate-of-Return Reform Order*.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Robert W. Schwartz", written over a horizontal line.

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State	Buying Study Area Code	Buying Study Area Name	Study Area Type	Rural Indicator	Date Applied	Selling Study Area Code	Selling Study Area Name
AK	613001	ARCTIC SLOPE TEL. ASSOCIATION COOP. INC.	C	Y	200101	611449	ATEAC, INC.
AK	613011	INTERIOR TELEPHONE COMPANY INC.	C	Y	200101	611449	ATEAC, INC.
AK	613016	MUKLUK TEL. COMPANY, INC.	C	Y	200101	611449	ATEAC, INC.
AK	613017	ALASKA TELEPHONE COMPANY	C	Y	200101	611449	ATEAC, INC.
AK	613023	UNITED UTILITIES INC.	C	Y	200101	611449	ATEAC, INC.
AZ	457991	SADDLBACK COMMUNICATIONS COMPANY	C	Y	200112	455101	QWEST CORPORATION - AZ
IA	350739	REASNOR TELEPHONE COMPANY, LLC	A	Y	200601	351306	SULLY TEL. ASSOC.
IA	351187	PARTNER COMMUNICATIONS COOPERATIVE	C	Y	200607	351167	WINDSTREAM IOWA COMMUNICATIONS, INC. - NORTH
IA	351213	JORDAN SOLDIER VALLEY TELEPHONE COMPANY	A	Y	200101	351106	ALPINE COMMUNICATIONS, L.C.
IA	351229	LOST NATION-ELWOOD TEL. CO.	C	Y	200606	351170	WINDSTREAM IOWA COMMUNICATIONS, INC.- SYSTEMS
IA	351262	COMMUNICATIONS I NETWORK, INC.	C	Y	200211	351167	WINDSTREAM IOWA COMMUNICATIONS, INC. - NORTH
IA	351271	PANORA COMMUNICATIONS COOPERATIVE	C	Y	201005	351344	PRAIRIE TEL. CO., INC.
IA	351297	HEART OF IOWA COMMUNICATIONS COOP.	C	Y	200605	351167	WINDSTREAM IOWA COMMUNICATIONS, INC. - NORTH
IA	351298	SOUTH SLOPE COOP. TEL. CO.	C	Y	200108	351096	HEARTLAND TELECOMM CO OF IOWA dba ENVENTIS
IA	351407	KILLDUFF TELEPHONE COMPANY	A	Y	200411	351292	SEARSBORO TEL. CO.
IL	341049	MADISON TEL. CO.	C	Y	200106	341057	GALLATIN RIVER COMMUNICATIONS DBA CENTURYLINK
KS	411746	BLUE VALLEY TELE-COMMUNICATIONS, INC.	C	Y	200512	411842	UNITED TELEPHONE CO OF KS DBA CENTURYLINK
KS	411778	GORHAM TELEPHONE COMPANY INC.	C	Y	200611	411826	RURAL TEL. SERVICE CO., INC. DBA NEX-TECH
KS	411826	RURAL TEL. SERVICE CO., INC. DBA NEX-TECH	C	Y	200611	411842	UNITED TELEPHONE CO OF KS DBA CENTURYLINK
KS	411840	TWIN VALLEY TEL. INC.-KS	C	Y	200609	411842	UNITED TELEPHONE CO OF KS DBA CENTURYLINK
MN	361451	PAUL BUNYAN RURAL TEL. COOP.	C	Y	201001	361357	BLACKDUCK TEL. CO.
ND	381611	DICKEY RURAL TEL COOP.	C	Y	200211	381131	CITIZENS TEL CO OF ND dba FRONTIER COMM OF ND
ND	381614	POLAR COMMUNICATIONS MUTUAL AID CORP (A)	A	Y	200211	381131	CITIZENS TEL CO OF ND dba FRONTIER COMM OF ND
ND	381625	NORTHWEST COMMUNICATIONS COOPERATIVE	C	Y	200512	381623	NOONAN FARMERS TELEPHONE COMPANY
ND	381631	RED RIVER RURAL TEL. ASSN. DBA RED RIVER COMM	C	Y	200211	381131	CITIZENS TEL CO OF ND dba FRONTIER COMM OF ND
ND	381632	RESERVATION TELEPHONE COOPERATIVE	C	Y	200304	381131	CITIZENS TEL CO OF ND dba FRONTIER COMM OF ND
ND	382247	NEMONT TELEPHONE COOPERATIVE - ND	C	Y	200304	381131	CITIZENS TEL CO OF ND dba FRONTIER COMM OF ND
ND	383303	SRT COMMUNICATIONS, INC.	C	Y	200705	381447	NORTH DAKOTA TELEPHONE COMPANY
OR	532369	EAGLE TELEPHONE SYSTEM INC.	C	Y	201005	472226	MIDVALE TEL. EXCH. INC.
SD	391405	ALLIANCE COMM. COOPERATIVE, INC.-HILLS SD	C	Y	200506	391677	GOLDEN WEST TELECOM COOP (SIOUX VALLEY)
SD	391680	VENTURE COMMUNICATIONS COOPERATIVE	C	Y	200012	395145	QWEST CORPORATION - SD
UT	502277	CENTRAL UTAH TEL. INC.	C	Y	200104	505107	QWEST CORPORATION - UT
UT	502278	EMERY TELEPHONE dba EMERY TELCOM	C	Y	200104	505107	QWEST CORPORATION - UT
UT	502282	MANTI TELEPHONE COMPANY	A	Y	200104	505107	QWEST CORPORATION - UT
UT	502283	SKYLINE TELECOM	A	Y	200104	505107	QWEST CORPORATION - UT
UT	502287	UBTA-UBET COMM. INC. DBA STRATA NETWORKS	C	Y	200104	505107	QWEST CORPORATION - UT
UT	502288	ALL WEST COMMUNICATIONS-UT	C	Y	200104	505107	QWEST CORPORATION - UT