Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Reform -- Mobility Fund	)	WT Docket No. 10-208

T-MOBILE USA, INC.
PETITION FOR RECONSIDERATION OR CLARIFICATION

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EXECUTIVE SUMMARY

T-Mobile USA, Inc. ("T-Mobile") urges the Commission to modify or clarify one of the regulations promulgated by the *CAF Order* that will otherwise undermine T-Mobile's commitments to build out its network in rural areas in several states. A key component of the Commission's reform of the high-cost universal service fund ("USF") support program is the phasing down of existing competitive eligible telecommunications carrier ("CETC") support and transition of the current high-cost program to the new Connect America Fund ("CAF"). The Commission found that, in order "to avoid shocks to service providers that may result in service disruptions for consumers," the phase-down should start at the level of high-cost USF support received by CETCs for 2011. Use of total support for 2011 as a "baseline support amount" would "provide a reasonable approximation of the amount that competitive ETCs would currently expect to receive, absent reform, and a natural starting point for the phase-down of support."

Under Section 54.307(e)(1) of the Commission's rules, promulgated by the *CAF Order*, however, CETCs must calculate their "monthly baseline support amount" by dividing their total high-cost support for 2011 "by twelve." That formula fails to implement the *CAF Order* for two categories of CETCs that filed their ETC applications prior to adoption of the *CAF Order*: (1) those that were designated in 2011 and received federal high-cost USF support for part of 2011; and (2) those that are designated late in 2011 or in a subsequent year and receive no such support for 2011. In both cases, Section 54.307(e) would accelerate the phase-down for these two categories of CETCs, leaving them with significantly less support during the entire transition than similarly situated carriers. T-Mobile received ETC designations in four states in 2011 and has ETC designation applications pending in four other states.

For carriers that secured ETC designations during 2011 and received high-cost USF support for only part of the year, Section 54.307(e)(1), in an apparent oversight, would require a CETC's partial year support to be "divided by twelve." The resulting "monthly baseline support amount" will be only a fraction of "a reasonable approximation of the amount that [a CETC] would currently expect to receive, absent reform," in a typical month and thus far less than the level of high-cost USF support intended by the *CAF Order*. Such an abrupt, random reduction in support cannot satisfy the principle set forth in Section 254(b)(5) of the Communications Act that support should be "specific, predictable and sufficient."

Similarly, for carriers with ETC designation applications that were pending prior to adoption of the *CAF Order* and that are granted too late to receive federal high-cost USF support for 2011, monthly baseline support should be based on the monthly high-cost support they would have received under the prior rules (including the 2008 interim CETC cap), "absent reform," if they had been designated ETCs and received support for 2011. The only distinction between those ETC applicants and a CETC that was designated in 2011 is a processing delay.

Moreover, reduction or elimination of T-Mobile's federal high-cost USF support under Section 54.307(e)(1) would threaten the planned build-out of rural cell sites and undermine the expectations of rural consumers for new affordable mobile services. This reduction or elimination of support would result in unwarranted discrimination against T-Mobile and other CETCs in similar situations.

In neither case does the relief requested by T-Mobile increase the total amount of CETC support to be disbursed during the transition. The total amount of CETC support for 2011 to be used in deriving the baseline amount is limited by the 2008 interim CETC cap to a fixed amount and can be calculated now for both categories of carriers affected by this request.

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T-Mobile USA, Inc. ("T-Mobile") requests reconsideration or clarification, pursuant to Section 1.429 of the Commission's rules,[1] of one of the regulations promulgated by the *CAF Order* in order to carry out its stated intent regarding the phase-down of high-cost universal service fund ("USF") support.[2]

I. INTRODUCTION

T-Mobile generally supports the landmark revamping of the high-cost USF and intercarrier compensation ("ICC") regimes implemented in the *CAF Order*. T-Mobile

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[1] 47 C.F.R. § 1.429.

[2] Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund*, WC Docket No. 10-90, FCC 11-161 (Nov. 18, 2011) ("*CAF Order*"), 76 Fed. Reg. 73830 (Nov. 29, 2011).

consistently advocated pro-consumer and pro-competitive USF and ICC reforms throughout this proceeding and largely supports the implementation of the goals set forth in the *CAF Order*. In that regard, T-Mobile urges the Commission to modify or clarify one of the regulations promulgated by the *CAF Order* in order to implement a more balanced and equitable transition toward a more effective USF program.

Specifically, the *CAF Order* intends that competitive eligible telecommunications carrier ("CETC") high-cost USF support phase down from a baseline level "that competitive ETCs currently expect to receive, absent reform."[3] Section 54.307(e)(1) of the Federal Communications Commission ("Commission") rules,[4] promulgated by the *CAF Order*, however, frustrates that intent in the case of any CETC that filed an application for ETC designation in a given jurisdiction prior to adoption of the *CAF Order* and either: (1) was granted ETC status in 2011 and received federal high-cost USF support for only part of 2011; or (2) is granted ETC status too late to receive such support for 2011.

In order to provide "a natural starting point for the phase-down of support,"[5] that provision accordingly should be revised or clarified to direct that the baseline level of monthly support for a CETC in the first category be calculated by dividing the total amount of support received for 2011 by the number of months in 2011 for which the CETC received support, instead of "by twelve."[6] Similarly, for a carrier in the second category, the same goals would be furthered by calculating monthly baseline support based on the average monthly federal high-

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[3] *Id.* at ¶ 515.

[4] 47 C.F.R. § 54.307(e)(1).

[5] *CAF Order* at ¶ 515.

[6] 47 C.F.R. § 54.307(e)(1).

cost USF support it would have received if it had been a CETC and received support for 2011 under the prior rules.

II. THE RULES SHOULD CARRY OUT THE INTENT OF THE *CAF ORDER* TO ESTABLISH A REASONABLE LEVEL OF BASELINE MONTHLY SUPPORT FOR CETCS

A key component of the Commission's reform of the high-cost USF support program in the *CAF Order* is the transition of existing competitive ETC support to the new Connect America Fund ("CAF") over a five-year period. The Commission finds that "a transition is desirable in order to avoid shocks to service providers that may result in service disruptions for consumers."[7] The Commission accordingly concludes that total high-cost support received in 2011 should be used to set the baseline level of support for the transition in order to "provide *a reasonable approximation of the amount that competitive ETCs would currently expect to receive, absent reform, and a natural starting point for the phase-down of support*."[8]

Section 54.307(e)(1) of the Commission's rules, promulgated by the *CAF Order*, however, fails to achieve this goal for two categories of CETCs that had applications for ETC designation pending prior to adoption of the *CAF Order*: (1) those that were designated and received high-cost USF support for part of 2011; and (2) those that are designated too late -- either in 2011 or a subsequent year -- to receive any support for 2011. T-Mobile was granted ETC status in four states in the course of 2011 and has ETC applications pending in four more states, thus falling into both categories.

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[7] *CAF Order* at ¶ 513.

[8] *Id.* at ¶ 515 (emphasis added).

A. CETCs Designated And Receiving High-Cost USF Support For 2011 Should Receive Monthly Baseline Support At A Level Reflecting The Months They Received 2011 Support

The Commission's intent regarding the calculation of baseline support is underscored in subsequent paragraphs of the *CAF Order* that emphasize the need for a steady baseline measure reflecting the actual rate of support "*had we retained the identical support rule* going forward."[9]

> Competitive ETC support per study area will be frozen at the 2011 baseline, *and that monthly baseline amount will be provided* from January 1, 2012 to June 30, 2012. . . .
>
> . . . .
>
> [W]e also considered (a) applying the reduction factors to each state's interim cap amount, or (b) converting each competitive ETC's baseline amount to a per-line amount, to which the reduction factor would be applied. We reject these alternatives because *they would provide less certainty regarding support amounts for competitive ETCs during the transition* and would create greater administrative burdens and complexity. . . . Under the second alternative, *a competitive ETC's support would fluctuate* based on line growth or loss.[10]

These discussions can only be read to require that the baseline amount of high-cost USF support received in the first half of 2012 be based on the same level of monthly support that the CETC received in 2011. Significant fluctuations up or down from the support flow rate in 2011 were to be avoided.

Section 54.307(e)(1) of the Commission's rules, however, fails to achieve this goal when a CETC receives high-cost support for only a portion of 2011. That provision states in part:

> Baseline Support Amount. Each [CETC] will have a "baseline support amount" equal to its total 2011 support in a given study

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[9] *Id.* at ¶ 516 (emphasis added).

[10] *Id.* at ¶¶ 519, 521 (emphasis added).

> area . . . . Each [CETC] will have a "monthly baseline support amount" equal to its baseline support amount divided by twelve.[11]

This provision implements the *CAF Order* in most situations, in which a CETC has received high-cost USF support for all of 2011 in a given area. When a CETC is designated during 2011 and receives support for only a portion of the year, however, the new rule generates anomalous results.[12] For example, a carrier designated as a CETC as of December 1, 2011, will receive only one month of high-cost support for 2011. If that amount is literally "divided by twelve" to yield its "monthly baseline support amount," its monthly baseline will be one-twelfth of a "reasonable approximation of the amount that [a CETC] would currently expect to receive, absent reform" in a typical month under "the identical support rule."[13] Thus, for the first half of 2012, the CETC would receive one-twelfth of the amount of high-cost support for each month that it received for the month of December. One-twelfth is not a "reasonable approximation" of the level of 2011 support and epitomizes the type of "shock[] to service providers," uncertainty and "fluctuat[ion]" that the *CAF Order* intended to avoid.[14]

This is not a theoretical concern to T-Mobile. It was designated as a CETC in Hawaii in March of this year, Idaho in July, Minnesota in September and Louisiana in October.[15] Dividing

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[11] 47 C.F.R. § 54.307(e)(1).

[12] Under 47 C.F.R. § 54.307(d), which was not affected by the *CAF Order*, "a [CETC] shall be eligible to receive support as of the effective date of its designation as an [ETC]."

[13] *CAF Order* at ¶¶ 515, 516; 47 C.F.R. § 54.307(e)(1).

[14] *CAF Order* at ¶¶ 513, 515, 521.

[15] *T-Mobile Central, LLC Ex Parte Application for Designation as an Eligible Telecommunications Carrier (ETC) for the purposes of receiving Universal Service Support for low income and rural service*, Docket No. S-31865 (La. Pub. Serv. Comm'n decided Oct. 12, 2011, adopted Dec. 8, 2011) ("*LPSC ETC Order*"); *Order Granting Petition for ETC Designation, T-Mobile*, Docket # No. P-6856/M-11-123 (Minn. Pub. Serv. Comm'n Sept. 27, 2011) ("*MPSC ETC Order*"); *Application of T-Mobile West Corp. for Designation as an Eligible*

the partial year support for those service areas by 12 will result in monthly baseline amounts for those areas significantly below the level intended by the *CAF Order*. A regulation that is so contrary to the intent and language of its promulgating order likely could not withstand judicial review and should be reconsidered or clarified.[16]

Moreover, such an abrupt, arbitrary and inconsistent reduction in high-cost support violates on a number of grounds the principle set forth in Section 254(b)(5) of the Communications Act of 1934 ("the Act") that universal service support should be "specific, predictable and sufficient."[17] The amount of the reduction varies depending on when in 2011 a carrier is designated an ETC and thus becomes eligible for high-cost USF in a given state. Because of the vagaries of state processes, this date is entirely unpredictable. An ETC designated in 2011 also receives much less high-cost USF support than a carrier designated in 2010 that is otherwise in precisely the same situation with the same support needs under the Section 254 criteria as the carrier designated in 2011. Carriers designated as ETCs in 2011 had no prior notice that they would be subject to this disparate treatment. This discriminatory,

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Telecommunications Carrier, Case No. TMW-T-10-01, Order No. 32319 (Idaho Pub. Util. Comm'n Aug. 9, 2011) ("*IPUC ETC Order*"); *Application of T-Mobile West Corp. For Designation as an Eligible Telecommunications Carrier in the State of Hawaii*, Docket No. 2010-0119 (Haw. Pub. Serv. Comm'n Mar. 14, 2011) ("*HPSC ETC Order*").

[16] Courts have held as "arbitrary and capricious" regulations or other agency actions that were not supported by a "concise general statement of basis and purpose" containing a reasoned explanation for the regulation promulgated or action taken by an agency. *See e.g.*, *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 129 S. Ct. 1800, 1811 (2009) ("the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is*" taking such action.).

[17] 47 U.S.C. § 254(b)(5).

random reduction in support for carriers designated in 2011 to receive high-cost USF support cannot be considered "specific" or "predictable."[18]

Furthermore, particularly in the case of carriers designated as ETCs late in 2011, the steep reduction in high-cost USF support results in funding that is not "adequate . . . to achieve the goals of the universal service program" and thus is not "sufficient."[19] The Commission may ignore the principle that support should be "specific, predictable and sufficient" only if that is necessary to achieve other statutory universal service goals or if required by limitations on the Commission's authority.[20] The *CAF Order*, however, provides no justification for the anomalous support levels resulting from Rule 54.307(e)(1) for ETCs designated to receive high-cost USF support in 2011. Rather, "legacy" CETC support was intended to phase down "gradual[ly]" from the level of "existing support" "as of year end 2011."[21]

T-Mobile emphasizes that the requested relief will not increase the total amount of high-cost CETC support to be disbursed during the transition. Under the *CAF Order*, the 2008 *Interim Cap Order*[22] governs until the CETC transition begins on January 1, 2012,[23] thus limiting to a fixed amount the total high-cost CETC support for 2011 to be used in deriving the

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[18] *See id. See also CAF Order* at ¶ 125 (setting overall CAF funding budget at the same level as the 2011 high-cost program provides "the greatest certainty and predictability to all stakeholders.").

[19] *High-Cost Universal Service Support*, 25 FCC Rcd 4072, 4088 ¶ 30 (2010), *aff'd sub nom., Vt. Pub. Serv. Bd. v. FCC*, 661 F.3d 54 (D.C. Cir. 2011).

[20] *Qwest Corp. v. FCC*, 258 F.3d 1191, 1199 (10th Cir. 2001).

[21] *CAF Order* at ¶ 29.

[22] *High-Cost Universal Service Support*, 23 FCC Rcd 8834 (2008) ("*Interim Cap Order*").

[23] *CAF Order* at ¶ 527 (interim CETC cap "in place" until the CETC phase-down transition begins).

baseline.[24] In any event, it is T-Mobile's understanding that there are very few CETCs in the same situation because most CETCs were designated prior to 2011.

B. Carriers That Filed ETC Applications Prior To Adoption Of The *CAF Order* That Are Granted Too Late To Receive High-Cost Support In 2011 Should Receive Phase-Down Support Based On The Average Amount Of Monthly Support They Would Have Received For 2011 Under The Prior Rules

Similarly, carriers with ETC designation applications for high-cost USF support that were pending prior to adoption of the *CAF Order* and ultimately granted too late to receive support for 2011 should receive monthly support keyed to the average monthly high-cost support they would have received in 2011, "absent reform,"[25] if they had been designated ETCs and received support for 2011 under the prior rules. Rule 54.307(e) prevents a CETC from receiving any phase-down support during the entire transition if it did not receive high-cost support for 2011. A carrier that is ultimately designated as an ETC, however, has the same demonstrated need for high-cost support as any CETC receiving support in 2011. Specifically, T-Mobile has ETC applications pending for high-cost USF support in Arizona, Mississippi, Oregon and Georgia.[26] The only

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[24] Because the requested relief will not increase the baseline "CETC budget," it does not upset the balance the Commission sought to establish among all affected stakeholders in the *CAF Order*. This is unlike the mid-size incumbent carrier request to delay implementation of "bill and keep" ICC for non-access traffic exchanged between local exchange carriers and commercial mobile radio service carriers. *See* letter from Karen Brinkmann to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-92 (Dec. 14, 2011).

[25] *CAF Order* at ¶ 515.

[26] *Application of T-Mobile West Corp. Petition for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(2),* Docket No. T-20822A-11-0394 (Ariz. Corp. Comm'n, filed Oct. 26, 2011); *Petition of T-Mobile South LLC for Designation as an Eligible Telecommunications Carrier for Purpose of Receiving Federal Universal Service Support,* Docket No. 2010-UA-431 (Miss. Pub. Serv. Comm'n, filed Dec. 21, 2010); *T-Mobile West Corp.'s Application for Designation as an Eligible Telecommunications Carrier and Request for Supplemental Certification on Use of Funds*, Docket No. UM 1511 (Oregon Pub. Util. Comm'n,

distinction between a carrier designated to receive high-cost support in 2011, and a carrier with an ETC application pending prior to adoption of the *CAF Order* that is granted too late to receive support for 2011, is the extent of the bureaucratic delay in processing the applications. An ultimate grant demonstrates that the carrier made the requisite public interest showing prior to the *CAF Order* that otherwise fully justifies baseline support keyed to the level of high-cost support appropriate for 2011. Accordingly, the "monthly baseline support amount" for a competitive carrier that filed an ETC application prior to adoption of the *CAF Order* that is granted too late to receive high-cost support for 2011 should be equal to the average monthly amount of high-cost support that it would have received for 2011 if it had been designated an ETC and received support for 2011 under the prior rules.[27]

As in the case of carriers that receive high-cost USF support for part of 2011, the requested phase-down support for carriers with ETC applications pending prior to the *CAF Order* but that are granted too late to receive support for 2011 would not increase the overall phase-down support budget because the amount disbursed would be based on the level of high-cost support that would have been provided for 2011. That amount can be calculated now for carriers with pending ETC applications, and any such calculations necessarily will reflect the

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filed Dec. 8, 2010); *Application of T-Mobile South LLC for designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(2) of the Communications Act of 1934*, Docket No. 32967 (Ga. Pub. Serv. Comm'n, filed Nov. 16, 2010).

[27] With this clarification or modification of Rule 54.307(e)(1), these carriers would be treated similarly to all other CETCs under the other provisions of Rule 54.307(e) because their level of support would be stepped down based on the CETC transition phase in effect when they obtain their ETC designations. Thus, for example, under Rule 54.307(e)(2), a CETC receives "80 percent of its monthly baseline support amount" per month from July 1, 2012 until June 30, 2013. 47 C.F.R. § 54.307(e)(2)(ii). Applying T-Mobile's requested "monthly baseline support amount" calculation, a carrier with an ETC application pending prior to the *CAF Order* that receives its ETC designation in August 2012 would start receiving a monthly support amount equivalent to 80 percent of the average monthly amount of high-cost support it would have received for 2011 if it had been designated an ETC and received support for 2011.

interim CETC cap.[28] As in the case of CETCs designated and receiving some high-cost support for 2011, T-Mobile believes that only a handful of carriers have ETC designation applications still pending.

C. The Reduction Of T-Mobile's High-Cost Support Under Section 54.307(e) Would Be Discriminatory And Would Undermine T-Mobile's ETC Service Commitments

T-Mobile's ETC designations were based partly on T-Mobile's service and public interest commitments, including its commitment to use federal high-cost USF funding to expand deployment of its network in rural areas. If Section 54.307(e)(1) is not reconsidered or clarified, T-Mobile may not be able to meet its service commitments to the same extent that otherwise would have been possible, thereby leaving rural consumers with fewer choices and reduced access to T-Mobile's products and services. T-Mobile accordingly may be forced to consider significant adjustments to its commitments. As to at least some of T-Mobile's still-pending ETC applications, if Section 54.307(e)(1) is not reconsidered or clarified, T-Mobile could not reasonably be expected to meet the same service commitments it has made previously and would need to respond accordingly, including possible withdrawal of those pending applications.

The interrelated nature of T-Mobile's service commitments and expected high-cost funding is illustrated by the grant of T-Mobile's ETC application by the Hawaii Public Service Commission ("HPSC"). The HPSC found that "[f]ederal universal service support will enable T-Mobile to further build-out its GSM network in the State, to the benefit of consumers who utilize GSM technology for their communications needs."[29] The HPSC relied on T-Mobile's commitment to "'expand[] its footprint in areas it currently does not serve and broaden[] services

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[28] *See CAF Order* at ¶ 527 (CETC interim cap governs until phase-down transition begins).

[29] *HPSC ETC Order* at 35.

in areas served, enhancing consumer's access to its network and services.'"[30] Similarly, the Minnesota Public Service Commission granted T-Mobile's ETC application partly on the basis of its commitment to submit "periodic plans to upgrade infrastructure to improve service coverage, quality, and capacity."[31] In granting T-Mobile's ETC application, the Idaho Public Utilities Commission found that "granting T-Mobile ETC status will provide rural customers with greater access to wireless services. . . ."[32] The Louisiana Public Service Commission ("LPSC") granted T-Mobile's application for ETC status in rural and non-rural service areas in Louisiana partly on the basis of T-Mobile's "commitments regarding the use and expenditures of ETC funds" to provide "new services, higher levels of service quality and more service options."[33]

Although the terms of T-Mobile's service commitments to the LPSC are confidential, T-Mobile's expert witness stated in a pending parallel proceeding before the Georgia Public Service Commission ("GPSC") that, with USF support, T-Mobile will be able to expand coverage into rural areas where it otherwise would have been cost prohibitive and that its build-out plan will expand service availability for rural consumers through new rural cell sites.[34] T-Mobile's "updated service improvement plan" in support of its ETC application to the GPSC included "seven to eight" "new cell sites," "depend[ing] upon when [T-Mobile] obtains [ETC]

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[30] *Id.* (*quoting* T-Mobile's response to PUC-IR-108(1)(c)).

[31] *MPSC ETC Order* at 2, 4 (finding that T-Mobile's ETC application meets the public interest standard, which, *inter alia*, requires the applicant to submit infrastructure upgrade plans).

[32] *IPUC ETC Order* at 13.

[33] *LPSC ETC Order* at 5.

[34] Post-Hearing Brief of T-Mobile South LLC at 10, 18, *Application of T-Mobile South LLC for designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(2) of the Communications Act of 1934*, Docket No. 32967 (Ga. Pub. Serv. Comm'n Dec. 2, 2011).

designation, [and] how much universal service support it would receive."[35] All of T-Mobile's ETC designations rely upon similar confidential obligations to use federal high-cost USF support to expand network facilities by building new cell sites in rural areas. T-Mobile's service commitments in support of its pre-*CAF Order* ETC applications thus are inextricably intertwined with and dependent upon the anticipated high-cost USF support "that [it] would currently expect to receive, absent reform."[36]

Accordingly, if T-Mobile's baseline high-cost USF support is greatly reduced in those jurisdictions where it received partial year support for 2011 or eliminated where its ETC application was filed prior to adoption of the *CAF Order* but is granted too late to receive support for 2011, its service expansion commitments to the state commissions and consumers will be undermined.[37] Moreover, because Section 54.307(e)(1) determines the crucial "monthly baseline support amount" at which the CETC phase-down begins, the significant reduction of that initial level of support -- to zero in the case of CETC applications not yet granted -- upsets business planning and T-Mobile's service commitments to a much greater extent than the gradual five-year phase-down itself. Section 54.307(e) thus unfairly discriminates against T-Mobile and other CETCs in the same situation. All CETCs that were designated prior to 2011

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[35] Transcript of ETC Designation Hearing at 139 (Testimony of Gene DeJordy), *Application of T-Mobile South LLC for designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(2) of the Communications Act of 1934*, Docket No. 32967 (Ga. Pub. Serv. Comm'n Nov. 17, 2011).

[36] *CAF Order* at ¶ 515.

[37] This deficiency cannot be cured by relaxing ETC service commitments after the fact, as discussed in the Further Notice of Proposed Rulemaking attached to the *CAF Order* at ¶ 1095. Once the deployment of new facilities begins or business plans are formulated in reliance on anticipated high-cost funding, there is no way to undo those investments if the funding is unexpectedly reduced or eliminated. Without the expected funding, a CETC may not be able to complete its promised deployments or use the new facilities to provide service.

will be able to "adjust and make necessary operational changes" during the "five-year transition,"[38] but CETCs designated in 2011 or later will be subject to an immediate slashing of federal high-cost USF support. The *CAF Order* does not address or attempt to justify this unreasonable difference in treatment among CETCs.

III. CONCLUSION

In order to carry out the intent and stated goals of the CETC phase-down transition set forth in the *CAF Order* and satisfy the Section 254(b)(5) principles, Rule 54.307(e)(1) should be modified or clarified to allow the "monthly baseline support amount" calculation to reflect a more accurate measure of high-cost support for 2011. In the case of a carrier granted ETC status in 2011 that received support for part of 2011, the total amount of support received for 2011 should be divided by the number of months for which it received support in 2011, rather than by 12, in order to calculate the "monthly baseline support amount." In the case of a carrier that filed an ETC application prior to adoption of the *CAF Order* that is granted too late to receive support for 2011, the "monthly baseline support amount" should be equal to the average monthly amount of high-cost support that the carrier would have received for 2011 if it had been designated an ETC and received support for 2011 under the prior rules. This revision or clarification would

[38] *CAF Order* at ¶ 513.

provide "certainty regarding support amounts for competitive ETCs during the transition" and achieve "phase-down support's purpose of protecting existing service during the transition."[39]

Respectfully submitted,

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[39] *Id.* at ¶¶ 521, 523.