Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
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 an 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

COMMENTS ON REQUEST FOR RECONSIDERATIONS BY THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES AND THE NEW JERSEY DIVISION OF RATE COUNSEL

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SUMMARY

The National Association of State Utility Consumer Advocates ("NASUCA") and the New Jersey Division of Rate Counsel ("Rate Counsel")(collectively, "Consumer Advocates") have grave concerns about many aspects of the voluminous and far-reaching, yet fundamentally flawed Order issued by the Federal Communications Commission ("FCC"), which significantly alters universal service fund ("USF") and intercarrier compensation ("ICC").[1] Consumer Advocates nonetheless address the various request for consideration filed in response thereto. Consumer Advocates submit that what ever action the FCC takes on these petitions for reconsiderations ("Reconsiderations") will not affect the issues raised by the various Petitions for Review consolidated in the United States Court of Appeals for the Tenth Circuit.[2] The subject appeals, if successful, will render many of the Reconsiderations moot or premature depending upon the ultimate relief granted by the Court.

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[1] *In the Matter of 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, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, released November 18, 2011. In these comments, references to the Report and Order are cited as ("*USF/ICC Transformation Order*" or "*Order*") and references to the Further Notice of Proposed Rulemaking are cited as "FNPRM." As the FCC is well aware, a number of parties, including NASUCA, have appealed the Order.

[2] There are currently thirteen appeals consolidated in the 10th Circuit under Docket No. 11-9900. Those appeals have been consolidated in the 10th Circuit Court of Appeals under *In re: FCC 11-161* as No. 11-9900. The Twelve appeals are docketed under case numbers 11-9591(AT&T), 11-9590 (Cellular South d/b/a Spire Wireless, 11-9586 (Choctaw Telephone Company), 11-9587 (Core Communications, Inc.), 11-9581 (Direct Communications Cedar Valley, LLC, et al.), 11-9592 (Halo Wireless, Inc.), 11-9588 (NASUCA), 11-9589 (National Telecommunications Cooperative Association), 11-9585 (Pennsylvania Public Utility Commission), 11-9596 (Public Utility Commission of Ohio), 11-9594 (Transcom Enhanced Services, Inc.), 11-9597 (TW Telecom, Inc.), 12-9500 (Vermont Public Service Board) and 12-1038 (NARUC). Several additional appeals have been filed by CenturyLink, Kansas State Corporation Commission of the State of Kansas, U.S. TelePacific Corp, North County Communications Corporation.

Therefore, Consumer Advocates submit that the FCC should defer action on certain Reconsiderations until the legal challenges are resolved.

On other Reconsiderations, Consumer Advocates note that FCC already modified the USF/ICC Transformation Order by it own motion in an order released on December 23, 2011 ("December 23rd Order").[3] Consumer Advocates submit the public interest would be served by a similar modification in several of the pending Reconsiderations as discussed below. In addition, Consumer Advocates submits that certain petitioners have other remedies available to them to address their specific concerns other than through a request for reconsideration. Those remedies are more than adequate to address the individual concerns, and where necessary, provide appropriate options that warrant rejection of those Reconsiderations.

[3] See Order on Reconsideration, FCC 11-189, released December 23, 2011 ("*December 23rd Order*").

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COMMENTS ON REQUEST FOR RECONSIDERATIONS BY THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES AND THE NEW JERSEY DIVISION OF RATE COUNSEL

I. INTRODUCTION

The National Association of State Utility Consumer Advocates ("NASUCA") as an organization,[4] and the New Jersey Division of Rate Counsel ("Rate Counsel")[5]

[4] NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate

(collectively, "Consumer Advocates") hereby submit comments in response to the Public Notice announcing the various Petitions for Reconsideration ("Reconsiderations") filed in the above referenced proceedings.[6]

Twenty-four Reconsiderations were filed by various parties.[7] Consumer Advocates have grave concerns about many aspects of the voluminous and far-reaching, yet fundamentally flawed Order issued by the Federal Communications Commission ("FCC"), which significantly alters the Universal Service Fund ("USF") and intercarrier compensation ("ICC").[8] Consumer Advocates submit that whatever action the FCC takes on these Reconsiderations will not affect the issues raised by the various Petitions for Review consolidated in the United States Court of Appeals for the Tenth Circuit.[9] The

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organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

[5] Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. The Rate Counsel, formerly known as the New Jersey Ratepayer Advocate, is in, but not of, the New Jersey Department of Treasury. *N.J.S.A.* §§ 52:27EE-46 *et seq.*

[6] Public Notice, Report No. 2945 dated January 12, 2013.

[7] Wyoming Public Service Commission ("Wyoming PSC"), Frontier Communications Corp., & Windstream Communications, Inc. (collectively "Frontier"), Via Stat, Inc. ("VS"), Verizon Communications, Inc. and Verizon Wireless ("Verizon"), United States Telecom Association, ("USTA"), Townes Telecommunications, Inc. ("Townes"), Blooston Rural Carriers ("BRC"), T-Mobile ("TM"), Independent Telephone & Telecommunications Alliance ("ITTA"), Alaska Rural Coalition ("ARC"), Wyoming Telecommunications Association ("WTA"), Wireless Internet Service Providers Association ("WISPA"), Sprint Nextel Corporation ("Sprint"), Rural Incumbent Local Exchange Carriers Serving Tribal Lands, ("Tribal Land Carriers"), NTCH, Inc. ("NTCH"), National Exchange Carriers Association, Organization for the Promotions and Advancement of Small Telecommunications Companies and Western Telecommunications Alliance ("Rural Associates"), MetroPCS Communications, Inc. ("Metro"), MTPCS, LLC d/b/a Cellular one ("Cellular One"), Rock Hill Telephone Company, d/b/a Comporium ("Comporium"), Accipiter Communications ("Accipiter"), Public Service Commission of the District of Columbia ("DCPSC"), General Communications, Inc. ("GCI"), Onvoy, Inc and 360 Networks (USA), Inc. ("360networks"), and Nexus Communications, Inc. ("Nexus")

[8] See Footnote 1, above.

[9] There are currently thirteen appeals consolidated in the 10th Circuit. Those appeals have been consolidated in the 10th Circuit Court of Appeals under *In re: FCC 11-161* as No. 11-9900. The Twelve appeals are docketed under case numbers 11-9591(AT&T), 11-9590 (Cellular South d/b/a Spire Wireless,

subject appeals, if successful, will render the issues raised in Reconsiderations moot or premature depending upon the ultimate relief granted by the Court. Therefore, Consumer Advocates submit that the FCC should defer action on certain Reconsiderations until the legal challenges are resolved. See comments on BRC, GCI, VS, TLC, USTA, VS, and Frontier. On other Reconsiderations, Consumer Advocates note that FCC already modified the *USF/ICC Transformation Order* by it own motion in an order released on December 23, 2011 ("*December 23rd Order*").[10] Consumer Advocates submit the public interest would be served by a similar Modification in several of the pending Reconsiderations as discussed below. See, comments on DCPSC, Comporium, Wyoming Public Service Commission, Wyoming Telecommunications Association, 360 Networks, Metro, WISPA, Sprint, and ARC Reconsiderations.

In addition, Consumer Advocates submits that certain petitioners have other remedies available to them to address their specific concerns other than through a request for reconsideration. Those remedies are more than adequate to address the individual concerns, and where necessary, provide appropriate options that warrant rejection of those Reconsiderations. See BRC, GCI Rural Associates, ITTA Nexus, Townes, NTCH, Cellular One, T-Mobile, VZ and Accipiter

Consumer Advocates offer these comments on the Reconsiderations.

11-9586 (Choctaw Telephone Company), 11-9587 (Core Communications, Inc.), 11-9581 (Direct Communications Cedar Valley, LLC, et al.), 11-9592 (Halo Wireless, Inc.), 11-9588 (NASUCA), 11-9589 (National Telecommunications Cooperative Association), 11-9585 (Pennsylvania Public Utility Commission), 11-9596 (Public Utility Commission of Ohio), 11-9594 (Transcom Enhanced Services, Inc.), 11-9597 (TW Telecom, Inc.), 12-9500 (Vermont Public Service Board) and 12-1038 (NARUC). Several additional appeals have been filed by CenturyLink, Kansas State Corporation Commission of the State of Kansas, U.S. TelePacific Corp, North County Communications Corporation.

[10] See Order on Reconsideration, FCC 11-189, released December 23, 2011.

II. COMMENTS ON THE RECONSIDERATIONS

1. BRC's Reconsideration

BRC raise concerns about the FCC decisions related to the Mobility Phase I fund and the award of support via reverse auctions.[11] Consumer Advocates submit that all of the concerns of BRC can be raised and addressed as part of ongoing FNPRM. As a result, BRC's Reconsiderations is premature. In addition, BRC has not exhausted its administrative remedies by participating in the FNPRM. Lastly, BRC's issues may be moot based upon the outcome of the 10th Circuit Appeals.

2. GCI's Reconsideration

GCI asks that phase down of remote Alaska Competitive Eligible Telecommunication Carriers Universal Service Fund support be delayed since GCI questions whether the Connect America Fund and Phase II and Mobility Fund Phase II will deliver sufficient support to remote Alaska. GCI asks for various changes to Remote Alaska Interim Cap rules.[12] Consumer Advocates submit that these concerns are more appropriately handled by GCI requesting a waiver as opposed to rule changes proposed. In additions, these issues can also be addressed in the FNPRM and therefore, GCI has not exhausted its administrative remedies. GCI also asks that the FCC clarify that the access reform rules do not mandate that intrastate toll VoIP traffic be governed by interstate rates where intrastate rates are lower than the current interstate access rates.[13] GCI also asks that the FCC clarify its rules for terminating end office access, transport, dedicated transport and reciprocal compensation rates when intrastate access rates are below

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[11] BRC at 3-17.
[12] GCI at 1-3.

[13] *Id.* at 16-22.

interstate access rates.[14] Lastly, GCI asks that the FCC address certain Mobility Fund Phase I issues related to bidding credits.[15] The first issue was addressed by the FCC in an Order released February 6, 2012, DA 12-154. Consumer Advocates submit that the latter two issues can be addressed either in the FNPRM, or by requesting a waiver, or asking for a declaratory relief. GCI issues may be rendered moot by the appeals in the 10th Circuit.

3. DCPSC Reconsideration

DCPSC asks the FCC to modify its rules on the Access Recovery Charge ("*ARC*") because the rules adversely impact DC consumers because the Incumbent Local Exchange Carrier serving DC would not lose any intrastate access revenue but could impose an *ARC* on DC consumers based upon the *ARC* rules.[16] Consumer Advocates submits that the issues raised by DCPSC point out the serious concerns that Consumer Advocates have with the *ARC*. NASUCA has raised similar concerns in its Docketing Statement in the 10th Circuit. Consumer Advocates suggest that the issues raised by DCPSC should be addressed by the FCC on its own motions, and the FCC should make the changes recommended by the DCPSC. The FCC already modified its *USF/ICC Transformation Order* by it own motion. See *December 23rd Order*.[17] The public interest would be served by similar action regarding the issues raised by the DCPSC.

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[14] *Id.*

[15] *Id.*

[16] DCPSC at 2-4.

[17] See Order on Reconsideration, FCC 11-189, released December 23, 2011.

4. Nexus Reconsideration

Nexus' request is moot because of the FCC's *December 23rd Order*. The FCC fully addressed the issues raised by Nexus. If Nexus is not satisfied with the FCC's *December 23rd Order*, its recourse is to appeal that order.

5. Cellular One Reconsideration and T-Mobile Reconsideration

Cellular One asks the FCC to implement a limited exception from its CETC support base line calculation methodology. Cellular One asks for (1) a limited exception for CETCs that are subject to network coverage requirements imposed by a state, (2) an alternative calculation of baseline support if the phase down commencing in July 12, 2012 would reduce Competitive Eligible Telecommunication Carrier ("CETC") support to at least 25% below the capped support it would receive in 2012 absent the Connect America Fund ('CAF") support freeze, (3) the frozen baseline to be modified based upon (a) line counts as of September 30, 2011, and (b)CETC cap reduction factors and per line support amounts as of December 31, 2011, rather than the support disbursed during 2011 per line support as of year end, and (4) an eligible CETC be permitted to file September 30, 2011 line counts by March 31, 2012 with USAC and USAC directed to process IAS line counts according to the same disbursement timetable as the remaining categories of support. Cellular One estimates that the implementation of these changes would increase the nationwide cap by no more than $4.2 million.[18] Consumer Advocates submit that the relief requested by Cellular One should be done through a waiver request rather than through a Petition for Reconsideration. In addition, before Cellular One can seek a

[18] Cellular One Reconsideration at pages ii and 18-19.

waiver, the FCC should direct Cellular One to exhaust its administrative remedies before the Montana Public Service Commission ("Montana"). According to Cellular One, Montana imposed coverage requirements that mandates that 98% of the populations be served by 2013. Montana may be willing to waive the coverage requirements or provide state Universal Service Fund support to eliminate the harms espoused.

T-Mobile asks that the FCC modify or clarify application of the formula in Section 54.307(e)(1) of the Commission's rules. T-Mobile claims that the formula fails to address how to calculate the monthly baseline support amount for two categories of CETCs. T-Mobile asserts that CETCs that filed their ETC applications prior to the adoption of the rule (i.e. those that were designated in 2011 and receive support for only part of 2011) and CETCs that are designated late in 2011 or in a subsequent year and receive no support in 2011. T-Mobile claims that the existing rule would accelerate the phase-down for these two categories leaving them less support during the entire transition period. T-Mobile has 8 applications pending falling within the two categories.[19] T-Mobile also claims that if their support is reduced various service commitments made to four state commissions may not be met.

Consumer Advocates submit that the FCC should find that the relief requested by T-Mobile should be done through a waiver request rather than through a Petition for Reconsideration. In addition, before T-Mobiler One can seek a waiver, the FCC should direct T-Mobile to exhaust its administrative remedies before the various state commissions where T-Mobile asserts its service commitments could be affected.[20]

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[19] T-Mobile at i, ii, 3-8.

[20] *Id.* at 10-13.

6. Comporium Reconsideration

Comporium asks that the FCC to reconsider the rate of return financial reporting requirements for privately held rate of return carriers under Section 54.313 of the Commission's rules. Section 54.313 requires carriers receiving high-cost and/or CAF support to submit an annual financial report which is audited and certified by an independent certified public accountant, by April 1, 2012. The financial report is to be publicly available. Specifically, Comporium requests that the FCC revise its rules by permitting companies with multiple study areas under common ownership or control to be permitted to submit the following financial schedules (Balance sheet, Profit and Loss and Supporting Schedules) for regulated operations to be accompanied by an officer affidavit. Comporium also requests that the time of filing such reports be extended from April 1st to October 15th.

Consumer Advocates suggest that the issues raised by Comporium should be addressed by the FCC on its own motion, and the FCC should make the changes recommended by Comporium. The FCC already modified its *USF/ICC Transformation Order* by it own motion. See *December 23rd Order*. Consumer Advocates submit the public interest would be served by similar action here.

7. Wyoming Public Service Commission and Wyoming Telecommunications Association

WPCS and WTA ask that the FCC modify Sections 54,313(a)(1) and (10) to allow Wyoming carriers to simply certify their pricing. WPSC asserts that the rule's certification requirement would be factually incorrect and inconsistent with previous

rulings.[21] Consumer Advocates suggest that the issues raised by WPSC and WTA should be addressed by the FCC on its own motion and the FCC should make the changes recommended by WPSC and WTA. The FCC already modified its *USF/ICC Transformation Order* by it own motion. See *December 23rd Order*. Consumer Advocates submit the public interest would be served by similar action here.

8. 360 Networks Reconsideration

360 Networks asks the FCC to clarify that the default transitional rates adopted at paragraphs 944-945 of the *USF/ICC Transformation Order* do not apply to toll VoIP-PSTN traffic when parties have an interconnection agreement that specifies that such traffic shall be exchanged on a bill-and-keep basis. Consumer Advocates suggest that the issues raised by 360 Networks should be addressed by the FCC on its own motion and the FCC should make the changes recommended by 360 Networks. The FCC already modified its *USF/ICC Transformation Order* by it own motion. See *December 23rd Order*. Consumer Advocates submit the public interest would be served by similar action here.

9. Tribal Land Carriers Reconsideration

Tribal Land Carriers ("TLC") ask the FCC to rescind Section 54.313(a)(9) as it applies to wireline ETCs.[22] TLC asserts various legal challenges to the requirements imposed by the above referenced rule; (1) whether the requirements are not supported by the record, (2) whether the rule is arbitrary and capricious, (3) the rule is unduly

[21] See WPCS Reconsideration at 2-4; WTA Reconsideration at 1-8; see also I/M/O High-Cost Universal Service Support Federal-State Joint Board on Universal Service: Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal Service Funds for Customer of Wyoming's Non-Rural Incumbent Local Exchange Carrier, WC Docket No. 05-337, CC Docket No. 96-45, Released April 16, 2010 at ¶ 5.
[22] TLC at ii, 14.

burdensome, (4) the marketing provisions of the rule violate the First Amendment, and (5) the rules to comply with Tribal business and licensing requirements violate state and federal law.

As discussed above, Consumer Advocates submit that the FCC should defer action on these Reconsiderations until the legal challenges raised in the 10th Circuit are resolved.

10. Metro Reconsideration

Metro ask FCC to clarify or modify its traffic stimulation rules in order to eliminate potential loopholes. Specifically, Metro requests clarification on (1) the definition of an "access revenue sharing agreement" applies to fix fee arrangements, (2) the definition applies not only with the terminating LEC, but also any affiliate of the terminating LEC, (3) the manner in which the 3:1 traffic imbalance ratio is applied, and (4) application of the rules to the intrastate access segment of the market. Consumer Advocates suggest that the issues raised by Metro should be addressed by the FCC on its own motion and make the changes recommended by Metro. The FCC already modified its *USF/ICC Transformation Order* by it own motion. See *December 23rd Order*. Consumer Advocates submit the public interest would be served by similar action here.

11. Rural Associates Reconsideration.

Rural Associates asks the FCC to reconsider or clarify seven areas of its USF/ICC Transformation Order.[23] Rural Associates requests (1) that the obligation to provide broadband be delayed until the new CAF mechanism is in place, (2) that the cost recovery caps and limitations on Rural Local Exchange Carriers ("RLECs") be modified

[23] Rural Associates at i, ii, iii, 1-40.

to allow for expansion and the regression based caps on recovery of capital and operating expenses, (3) that end user rate floor is too low, the phase-out or elimination of the safety net additive, per-line cap on RLECs' overall legacy high-cost support,(4) that the FCC abandon its approach to waivers and additional funding for access replacement support, (5) that the FCC revise annual reporting requirements under Section 54.313, (6)that the FCC modify the process for represcribing the interstate rate of return, (7) that the FCC revisit various aspects of its ICC rules.

As discussed above, Consumer Advocates submit that the FCC should defer action on the issues raised in this Reconsideration until the legal challenges raised in the 10th Circuit are resolved.

12. WISPA Reconsideration

WISPA asks that the FCC to replace the term "unsubsidized competitor" with the market based term of "area subject to unsubsidized competition.[24] WISPA asserts that this change would provide a more accurate measure of areas that already have facilities-based voice and broadband services, irrespective of whether those services are provided by a single entity or multiple entities. The change would better ensure that the CAF support is extended to unserved areas. WISPA also asks that the FCC clarify how it will discontinue frozen high-cost support once an area becomes subject to unsubsidized competition.[25] To implement this change, WISPA asks that FCC revise the certification requirements and revise the certification to read:

> No frozen high-cost support dollars went to areas with unsubsidized competition so long as, with respect to investments in middle-mile

[24] WISPA at 2-3.

[25] *Id.* at 8-10.

> feeders, the support recipient must certify that at least 50 percent of the locations served are in census blocks shown as unserved by unsubsidized competition, as shown on the National Broadband Map.

WISPA also wants the annual certifications to be available for review and comment by entities that provide service in the subject area.[26] Consumer Advocates suggest that the issues raised by WISPA should be addressed by the FCC on its own motion and make the changes recommended by WISPA. The FCC already modified its *USF/ICC Transformation Order* by it own motion. See *December 23rd Order*. Consumer Advocates submit the public interest would be served by similar action here.

13. Sprint Reconsideration

Sprint asks that the FCC clarify and reconsider portions of its traffic pumping rules to ensure that they achieve their stated purpose, to make the rules more effective and to minimize pumpers' ability to game the system.[27] Sprint ask that the FCC to clarify that:

- The Order does not overturn previous Commission rulings or standards for determining whether a Local Exchange Carriers ("LEC's) free service provider partner is a legitimate end user/customer under its access tariff;
- The Order does not overturn the statutory requirement that telecommunications services be offered "for a fee";
- Assuming that the Commission retains its price cap LEC rate benchmark remedy, a CLEC that engages in traffic pumping may include in its rate benchmark only those price cap LEC rate elements associated with functions the CLEC actually performs;
- For benchmark purposes, a CLEC must use the price cap LEC's average local transport miles, or the CLEC's actual local transport miles, which ever is less.[28]

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[26] *Id.* at 9.
[27] Sprint at 1.

[28] *Id.* at 2-3.

Sprint asks that the FCC reconsider the following issues:

- Use of price cap LEC rate benchmarks, or recalculated 61.38 rates, for LECs that meet the traffic pumping triggers. Instead, Sprint states the Commission should mandate use of a rate of $.0007 for all LECs that meet the triggers;

- That if a CLEC stimulated traffic volume exceeds the price cap LEC's traffic volume, the Commission "will" (rather than "may") reevaluate whether any further rate reductions are warranted. A true-up mechanism must be incorporated to ensure that rates for the entire monitoring period are just and reasonable;

- That LECs that cease engaging in traffic pumping may revert back to the old way of establishing rates. Here again, a true-up mechanism must be incorporated into the revised ratemaking proceeding;

- That LEC have 45 days after meeting the triggers to file a revised access tariff. Sprint says this period to too long, and should be reduced to 15 days at the longest.[29]

Consumer Advocates suggest that the issues raised by Sprint should be addressed by the FCC on its own motion and make the changes recommended by Sprint with the exception of mandating an $.0007 rate. The FCC already modified its *USF/ICC Transformation Order* by it own motion. See *December 23rd Order*. Consumer Advocates submit the public interest would be served by similar action here.

14. ITTA Reconsideration

ITTA asks the FCC to reconsider what areas are eligible for CAF Phase I funding. ITTA submits that the National Broadband Map ("NBM") that is used as part of a two-part test for determining which areas are unserved for purposed of support. However, ITTA has found that in some cases the NBM overstates fixed broadband coverage but that there is no mechanism to raise concerns in the first part of the two-part test. This

[29] *Id.* at 3.

impact the certification required under the second part of the two-part test.[30] ITTA asks that the FCC clarify that an applicant for support should be able to demonstrate that an area is in fact, "unserved" as defined by the FCC notwithstanding the NBM. Consumer Advocates submit that ITTA concerns can be addressed in the FNPRM and therefore, ITTA reconsideration should be denied.

15. ARC Reconsideration

. ARC asks the FCC to reconsider and clarify the identical support issues applicable to Alaska, the role of middle mile cost and availability of capacity, reporting deadlines and tribal consultation. ARC request that the FCC:

- Reconsider denying rate of return carriers the same two year transition to the CAF as it granted CETC in Alaska.
- Reconsider implementing a two year delay of the additional limitations on loop Costs and Corporate Operations Expenses in Alaska.
- Clarify that landline CETCS in Alaska must comply with the appropriate rule changes regarding local rate benchmarks during the two year transition period and subsequent elimination of identical support.
- Reconsider allowing cost to be considered in the "availability" of terrestrial middle mile facilities and associated broadband deployment requirements.
- Reconsider the treatment of capacity in the provisions of middle mile services.
- Reconsider the Commission waiver as the only remedy for carriers.
- Reconsider the reporting deadlines contained in the Order and reestablish a due date of July 1, for reporting.
- Reconsider providing an automatic 60 day reporting extension upon notice by a carrier in remote Alaska that it will be unable to file its audit report due to circumstances beyond the rural carrier's control

[30] ITTA at 3.

- Reconsider and clarify the tribal consultation obligations in light of the vibrant role native community members already play in remote cooperative and companies.[31]

Consumer Advocates suggest that the issues raised by ARC should be addressed by the FCC on its own motion and the FCC should make the changes recommended by ARC. The FCC already modified its *USF/ICC Transformation Order* by it own motion. See *December 23rd Order*. Consumer Advocates submit the public interest would be served by similar action here.

16. NTCH Reconsideration

NTCH asks that the FCC revise the timeline to: (i) establish what areas are unserved and eligible for Mobility Fund, (ii) permit applicants to obtain ETC designations only if and when they receive Mobility Funding, (iii) detach Mobility Funding from any relationship to study areas or wireline centers, and (iv) award both operation support and construction support at the same time.[32] In addition, NTCH asks that the transition period to a fully open and competitive procedure for allocating high support funds should be abbreviated to three years, that LECs receiving USF support should be barred from assessing excessive access charges, that roaming rates for all wireless carriers should be capped at reasonable levels related to costs or retail offers, that AWS-2 spectrum should be allocated to diversify spectrum ownership and foster accelerated broadband deployment, and that the definition of "unsubsidized competition" should be changed to more accurately reflect the real state of competition in may

[31] ARC at 1-2, 4-18.

[32] NTCH at 1.

markets.[33] Consumer Advocates submit that NTCH concerns can be addressed in the FNPRM and therefore, NTCH reconsideration should be denied.

17. Verizon Reconsideration.

Verizon asks that the FCC clarify or reconsider (1) the interplay between the industry-wide phase-down of CETC support in the Order and the company-specific phase-down of wireless CETC support that Verizon committed to in the Alltel merger and (2) that the FCC reconsider its decision not to allow for technical feasibility or industry standards exceptions to the phantom traffic rules or delay the effective date of those rules.[34] Consumer Advocates submit that the issues raised by Verizon should be denied or in the alternative the FCC should defer action on the issues raised in this Reconsideration until the legal challenges raised in the 10th Circuit are resolved. With respect to issue 2, the FCC has provided a waiver process that can be used to address the Verizon concerns. As a result, the FCC should deny that part of the reconsideration. On issue 1, Consumer Advocates recommend that the FCC defer this issue until the legal challenges are resolved in the 10th Circuit.

18. Townes Reconsideration

Townes asks that the FCC to clarify that Townes and other rural carriers can use unlicensed spectrum to provide 3G or better wireless service under the "spectrum availability" requirement under the Mobility Fund rules. Townes claims that certain technologies, such as xMax cognitive radio technology offer lower cost alternative for rural carriers to provide 3G (and eventually 4G) services. Townes asks that FCC clarify that use of unlicensed is permitted and satisfies the requirements of Paragraphs 393 and

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[33] *Id.*

[34] Verizon at 3-8, 8-12.

394 of the USF/ICC Transformation Order and that applications for Remote Access Fund can use unlicensed spectrum.[35] Consumer Advocates submit that Townes concerns can be addressed in the FNPRM and therefore, Townes reconsideration should be denied.

19. USTA Reconsideration

USTA ask that the FCC reconsider several aspects of CAF Phase I including the following issues:

- The $775 per household deployment requirement is unreasonable and should establish a more realistic requirement.
- The flash-cut to new CAF Phase II support levels should be revised to a five year phase down.
- The use of legacy support to deploy and maintain broadband service by ETC should be modified so that ETC are not obligated to satisfy build-out requirements.
- That ETC will be relieved of their obligations and designations when USF support has been eliminated.
- Reducing high-cost support based upon low-end-user rates should be modified.
- The new reporting requirements and record retentions for ETC should be effective on July 1, 2012.
- The New ETC reporting requirements should not apply to carriers whose support is eliminated.
- The new reporting requirements preempt existing state requirements
- The Tribal reporting requirements should be eliminated.
- The reporting requirements should only apply prospectively.
- Increasing from 5 years to 10 years the new ETC document retention requirements should be reversed.
- Clarification is required on various issues on the implications raised by not designating broadband as a supported service.

[35] Townes at 3-5.

- The Commission should clarify that build-our requirements are subject to extension for delays outside the control of the ETC.

- The Commission should clarify when waivers of the upstream speed requirement can be filed.

- The Commission should harmonize the safety net additive support phase-out for ETCs and certain ILECs.

- The Commission should revise it rules that ETC annual reports are to be public.[36]

USTA also seek reconsideration of the *ARC*, including:

- The baseline revenue calculation for recovery for price cap carriers should be based upon billed not collected revenue.

- The residential rate ceiling should be calculated on a study area basis and not on a customer-by customer basis.

- The *ARC* charge should be an interstate charge even though it may include recovery of intrastate revenues.

- The Commission should modify it rules that *ARC* cannot be recovered by Lifeline customers.

- The Commission should modify its access stimulation rules to preclude routing of traffic to increase recovery mileage charges.

- The Commission should cap the rates that CLEC can charge under access stimulation rules to $.0007 per minute.

- The Commission should require a carrier entering the market after December 29, 2011 to charge intrastate access rates that mirror interstate rates at the outset instead of July 1, 2013.

- The Commission should clarify that suspension decisions under Section 252(f)(2) do not extend to the ICC regime.

- The Commission should clarify that the "interim default rate" for rate-of-return carriers and CMRS providers do not apply to price cap carriers.

- The Commission should revisit the treatment of certain originating access issues.

[36] USTA at 3-28.

- The Commission should clarify that date in rule 51.705(c)(3) will apply to the existing tariff regime (i.e., January 1 should be changed to July 1st.[37]

Consumer Advocates submit that the FCC should defer the issues raised by USTA until the legal challenges raised in the 10th Circuit are resolved.

20. Accipiter Reconsiderations

Accipiter asks that the FCC reconsider several portions of its USF/ICC Transformation Order that will affect Accipiter ability to survive. Accipiter asks that:

- The Commission should reconsider the regression caps because the caps are based upon flawed objective, flawed data, and lacks clarity. In addition, the Commission should clarify that when caps are implemented on July 1, 2012 , will they apply to Accipiter's 2010 cost study (affecting revenue in July2012) or will it apply to 2012 costs (affecting USF revenues received in 2014).

- The Commission should reconsider the $250 cap on monthly per-line support because the FCC failed to consider effect on growing companies.

- The Commission should reconsider the corporate operating expense ("COE") limit as applied to ICLS because the rules fail to consider the impact on growing companies, that the application of the cap to 2010 COE is arbitrary and capricious, and the one size fit all approach is flawed.

- The Commission should reconsider the reduction in support for "artificially low rates" because carrier face significant challenges in raising rates, Accipiter's "artificially low" usage rates serve important needs and those rates are comparable to rates in urban areas.[38]

Consumer Advocates submit that the issues raised by Accipiter are more appropriately addressed by seeking relief through a waiver due to the alleged unique factors that affect Accipiter. Therefore, Consumer Advocates submit that the FCC should deny the reconsideration with direction to Accipiter to file for a waiver from the applications of the rules.

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[37] USTA at 30-39.
[38] Accipiter at 7-21.

21. VS Reconsideration

VS ask that the FCC reconsider the right of first refusal approach and use reverse auctions for CAF phase 1 support so that support goes to lowest-cost providers. If the FCC chooses not to revisit its approach, VS ask that the FCC reconsider the follow issues:

- Reconsider the decision to categorically preclude satellite broadband providers from establishing that their services are viable competitive alternatives to incumbent offerings in a given geographic area.
- Reconsider its apparent decision not to impose strong accountability measures on ILECs prior to the distribution of any CAF support.
- Reconsider its decision to demand "reasonable comparability" of usage limits instead of reasonable comparability of broadband access in general.
- Reconsider its decision to delay the provisions of funding to "remote areas" that are most in need of CAF support.[39]

Consumer Advocates submit that the FCC should defer the issues raised by VS until the legal challenges raised in the 10th Circuit are resolved.

22. Frontier Reconsideration

Frontier asks that the FCC clarify that the CAF Phase I support will be distributed consistent with the approach proposed in the ABC Plan. In particular, the regression analysis will be applied to the entire pool of high-cost price cap funding while holding carrier harmless when distributing support. In addition, Frontier asks that the FCC reconsider its "one location per $775" Phase I deployment requirement and replace it with a more targeted performance obligation because the actual cost of deployment in unserved areas is likely to be well above $775 per location. Frontier also asks that the

[39] VS at 7-19.

FCC confirm that it did not intend to displace originating intrastate access rates for PSTN-originated calls that are terminated over VoIP facilities.[40] Consumer Advocates submit that the FCC should defer the issues raised by Frontier until the legal challenges raised in the 10th Circuit are resolved.

III. CONCLUSION

In view of the foregoing, Consumer Advocates asks the FCC to adopt the recommendation contained herein with respect the Reconsiderations.

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[40] Frontier at 2-3, 3-29.