

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

OPPOSITION OF VERIZON

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I. INTRODUCTION AND SUMMARY.

The *USF-ICC Transformation Order* puts in place unprecedented, critical intercarrier compensation (ICC) and universal service fund (USF) reforms.² For the first time in more than a decade of stops and starts, the order actually addresses many of the most difficult and contentious issues that have encumbered the USF and ICC regimes and divided the industry for years. This accomplishment was made possible by striking a reasonable balance among many conflicting interests.³ In addressing the handful of pending requests for reconsideration of the

¹ The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc. and Verizon Wireless (“Verizon”).

² *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90 *et al.*, FCC 11-161 (Nov. 18, 2011) (“*USF-ICC Transformation Order*” or “*Order*”). This Opposition is filed pursuant to 47 C.F.R. § 1.429(f).

³ *USF-ICC Transformation Order*, ¶ 13.

order the Commission should resist calls by some to back-track and upset this careful balance. The framework for reform is sound. It would be far more productive for parties and the Commission to now focus resources on implementing reforms in an efficient way.

Some petitions for reconsideration or clarification of the *USF-ICC Transformation Order*, such as those filed by USTelecom⁴ and Verizon,⁵ merely follow through on the basic principles of the order and seek to apply its framework more carefully to particular situations. These petitions seek minor adjustments to the *USF-ICC Transformation Order* to provide a workable set of ground rules necessary for the IP transition. Other petitions, however, seek to revisit the fundamental balance of interests at the core of the *USF-ICC Transformation Order*. For example, the National Exchange Carrier Association (NECA) and other rural local exchange carrier (RLEC) interests jointly request the Commission revisit the \$4.5 billion annual Connect America Fund (CAF) budget, upset key aspects of the *Order*'s USF reforms, and undo many of the fundamental ICC reforms implemented in the *Order*.⁶ The Commission should deny these requests.

In addition, the Commission should affirm that the rules for traffic exchanged between VoIP providers and carriers on the PSTN apply to all calls regardless of the direction of the traffic, including intrastate toll calls originating on the PSTN and terminating to a VoIP

⁴ Petition for Reconsideration of the United States Telecom Association, WC Docket Nos. 10-90 *et al.* (Dec. 29, 2011) (“USTelecom Petition”).

⁵ Petition for Clarification or, in the Alternative, for Reconsideration of Verizon, WC Docket Nos. 10-90 *et al.* (Dec. 29, 2011) (“Verizon Petition”).

⁶ Petition for Reconsideration and Clarification of NECA, OPASTCO and WTA, WC Docket Nos. 10-90 *et al.* (Dec. 29, 2011) (“NECA Petition”).

provider.⁷ The new VoIP-PSTN regime in the *Order* expressly covers both originating and terminating access charges. Any other conclusion would require a change to the plain terms of the *Order*, which would be a step backwards and would further delay the transition away from unsustainable, indirect intercarrier compensation subsidies. Despite the express terms of the *Order*, VoIP-PSTN originating access charge disputes are already popping up all over the country. Verizon alone has been forced into new VoIP-PSTN originating disputes in more than half of the states already. Yet another round of endless VoIP access charge litigation solves nothing and will drain considerable resources. The Commission should affirm that the *Order* means what it says: The new VoIP-PSTN regime applies to both terminating *and* originating access charges.

Finally, the Commission should reject a request to preclude some wireless carriers from participating in the new Mobility Funds, and a more specific request to exclude Verizon Wireless and Sprint because of unrelated merger commitments.⁸ Whether or not individual carriers choose to participate in these new programs there is no rational policy basis to exclude a class of providers or specific carriers. Such an approach would violate competitive neutrality requirements and decrease the chances that these new programs will be successful and benefit of consumers.

⁷ Petition for Reconsideration and/or Clarification of Windstream Communications Inc. and Frontier Communications Corp., WC Docket Nos. 10-90 *et al.* (Dec. 29, 2011) (“Windstream/Frontier Petition”).

⁸ Petition for Partial Reconsideration of the Blooston Rural Carriers, WC Docket Nos. 10-90 *et al.* (Dec. 29, 2011) (“Blooston Petition”).

II. THE COMMISSION SHOULD AFFIRM THE FUNDAMENTAL BALANCE OF INTERESTS IN THE ORDER.

A. Revisiting The CAF Budget Would Be A Mistake.

There is no basis to re-open the budget for the high cost portion of the USF yet again as NECA suggests.⁹ In the *USF-ICC Transformation Order*, the Commission identified the crucial need to rein in the growing high cost fund by imposing fiscal responsibility.¹⁰ It found that a fixed CAF budget was necessary to “protect consumers and businesses that ultimately pay for the fund through fees on their communications bills” and that the \$4.5 billion budget “represent[s] our predictive judgment as to how best to allocate limited resources at this time.”¹¹ Accordingly, the Commission adopted the reform goal of minimizing the overall burden of universal service contributions on consumers and businesses in order to balance the objectives of Section 254(b) of the Act.¹² Similarly, the Commission correctly found that rate-of-return reforms were necessary to “increas[e] accountability and incentives for efficient use of public resources.”¹³ These reforms were relatively minor and only addressed the most glaring problems inherent in the regime. Nowhere in its petition does NECA acknowledge these goals and statutory requirements, or explain how its requests can be squared with them. And, in fact, the Commission left support levels for rate-of-return ILECs effectively unchanged.¹⁴ At these support levels, the rate-of-return ILECs that NECA represents have largely succeeded in

⁹ See NECA Petition at 2-8. See also 47 U.S.C. § 254(b)(5) (support should be “specific, predictable and sufficient”).

¹⁰ See *USF-ICC Transformation Order* ¶ 11.

¹¹ *Id.* ¶ 18.

¹² *Id.* ¶ 57. See 47 U.S.C. § 254(b).

¹³ *USF-ICC Transformation Order* ¶ 26.

¹⁴ *Id.* ¶¶ 26-27.

deploying broadband throughout their service territories, despite their intensively rural character. By contrast, “[m]ore than 83 percent of the approximately 18 million Americans who lack access to fixed broadband live in price cap study areas.”¹⁵

B. The New ICC Rules Should Not Be Skewed to Benefit Rate-of-Return ILECs.

The Commission should reject NECA’s request to rebalance the benefits and burdens of ICC reform. NECA’s requests are broad, and include proposals to expand universal service funding generally and CAF ICC recovery funding. NECA’s renewed effort to revisit the long-standing intraMTA rule (reconfirmed in the *USF-ICC Transformation Order*)¹⁶ is particularly egregious. For instance, there is no merit to NECA’s argument that a terminating LEC should now be permitted to impose access charges on an intraMTA CMRS call that is routed through an interexchange carrier.¹⁷ Moreover, NECA’s request would fundamentally undermine the bill-and-keep regime that the Commission established for LEC-CMRS traffic – a regime that the Commission already delayed for six months.¹⁸

As the Commission correctly pointed out, the intraMTA rule applies irrespective of whether an intraMTA call is routed through another carrier or carriers.¹⁹ NECA’s claim that terminating carriers will not be able to identify CMRS-LEC traffic that is carried by

¹⁵ *Id.* ¶ 127.

¹⁶ *See* NECA Petition at 36.

¹⁷ *See id.* at 36-37.

¹⁸ *See Connect America Fund, et al.*, Order on Reconsideration, WC Docket Nos. 10-90, *et al.*, FCC 11-189, ¶ 8 (Dec. 23, 2011); *see also* Letter from Thomas Jones, Minnesota Independent Equal Access Corp., to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (Dec. 20, 2011); Letter from Michael R. Romano, National Telecommunications Cooperative Ass’n, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et al.*, at 2-3 (Dec. 9, 2011).

¹⁹ *See USF-ICC Transformation Order* ¶ 1007.

interexchange carriers was addressed and rejected in the *Order*. The Commission correctly concluded that, consistent with longstanding practices, “parties may calculate overall compensation amounts by extrapolating from traffic studies and samples.”²⁰ NECA raises no new arguments.

There is similarly no basis to grant NECA’s request that terminating LECs be allowed to assess access charges based on originating and terminating telephone numbers, particularly in the case of VoIP and mobile calls.²¹ Verizon and other parties have demonstrated repeatedly that, because wireless telephone numbers often do not reflect wireless callers’ actual locations, LECs and wireless carriers exchanging traffic negotiate factors to allocate wireless calls between the reciprocal compensation and access charge regimes based on their mutual agreement as to the actual breakdown between intraMTA and interMTA traffic.²² The Commission approved this practice when it first promulgated the intraMTA rule in 1996, finding that parties may calculate overall compensation amounts by extrapolating from traffic studies and samples.²³ There is simply no basis for NECA’s repeated request to ignore long-standing Commission precedent and industry practice.²⁴ NECA’s request is simply irrational given the declining relevance of telephone numbers to the location of the calling and called parties.²⁵

²⁰ *Id.* at n.2132.

²¹ See NECA Petition at 34 (VoIP) and 37 n.96 (CMRS).

²² See, e.g., Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, “Phantom Traffic” Solutions (attached) at 12-14 (Nov. 1, 2006). See also T-Mobile Comments at 13 (Apr. 1, 2011).

²³ See *Developing a Unified Intercarrier Compensation Regime*, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855, ¶ 14 (2005); see also *USF-ICC Transformation Order* at n.2132.

²⁴ NECA also requests that the Commission reconsider its decision not to permit a terminating carrier to impose financial responsibility for traffic delivered without adequate billing information on the immediately preceding carrier in the call chain. See NECA Petition at 38-39.

III. THE COMMISSION SHOULD AFFIRM THE SYMMETRIC INTERIM APPLICATION OF ACCESS CHARGES TO CALLS BETWEEN THE PSTN AND VOIP CUSTOMERS.

NECA and Windstream/Frontier both suggest that the new rate limitations for traffic between VoIP providers and the PSTN should be interpreted as not applying to intrastate toll calls that originate on ILEC networks and terminate to VoIP providers.²⁶ Such a reading of the *USF-ICC Transformation Order* is incorrect. The Commission explicitly rejected the asymmetrical compensation approach with respect to IP traffic: it “decline[d] to adopt an asymmetric approach that would apply VoIP-specific rates for only IP-originated or only IP-terminated traffic,” as some commenters had proposed.²⁷ The Commission cited arbitrage concerns relating to asymmetric payments on VoIP traffic, concluding that “[a]n approach that addressed only IP-originated traffic would perpetuate—and expand—such concerns.”²⁸

The Commission expressly decided *not* to apply the pre-existing access regime to *any* VoIP-PSTN traffic, whether IP-originated or IP-terminated. As the FCC concluded, “subject[ing] VoIP traffic to the pre-existing intercarrier compensation regime that applies in the context of traditional telephone service, including full interstate and intrastate access charges...would require the Commission to enunciate a policy rationale for expressly imposing

The Commission, however, correctly found that imposing financial responsibility on upstream carriers would unfairly burden tandem and other intermediate providers. *See USF-ICC Transformation Order* ¶ 732.

²⁵ *See Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404, ¶ 9 (telephone number used to identify Vonage user’s IP address “is not necessarily tied to the user’s physical location”, which can be “anywhere in the world”).

²⁶ *See* NECA Petition at 34-35; Windstream/Frontier Petition at 21-29.

²⁷ *USF-ICC Transformation Order* ¶ 942; *see also id.* ¶ 948.

²⁸ *Id.* ¶ 942.

that regime on VoIP-PSTN traffic in the face of the known flaws of existing intercarrier compensation rules and notwithstanding the recognized need to move in a different direction.”²⁹

In light of these specific statements about the treatment of PSTN-VoIP traffic, the Windstream/Frontier Petition’s reliance on the Commission’s decision to wait to establish a *general* transition path for ILECs’ originating access rates is misplaced.³⁰ Such an approach would disregard the FCC’s specific intercarrier compensation framework for VoIP-PSTN traffic, which is distinct from its plan for reforming intercarrier compensation for traditional traffic.³¹ Crucially, the Frontier/Windstream Petition would ask the Commission to disregard the clear text of new Rule 51.913 itself, which leaves no doubt that the FCC’s VoIP-PSTN compensation regime applies to *all* VoIP-PSTN traffic, including traffic terminating in IP, and that the pre-existing intrastate access regime does *not* apply to any VoIP-PSTN traffic. That rule requires application of interstate switched access rates to traffic exchanged between carriers in Time Division Multiplexing (TDM) format “that originates and/or terminates in IP format.”³²

Again and again, the text of the *USF-ICC Transformation Order* makes clear that its VoIP-PSTN compensation regime includes charges for *both* IP-terminating *and* IP-originating traffic. For example, Paragraph 961 of the *Order* says exactly that: “[T]oll VoIP-PSTN traffic will be subject to charges not more than originating and terminating interstate access rates.”³³

²⁹ *Id.* ¶ 948.

³⁰ *See* Windstream/Frontier Petition at 21-27.

³¹ *See* “Inter-carrier Compensation for VoIP Traffic,” *USF-ICC Transformation Order* at Section XIV.

³² 47 C.F.R. § 51.913.

³³ *USF-ICC Transformation Order* ¶ 961 [footnote omitted]; *see also, id.* ¶ 940; *id.* ¶ 941 (explicitly including “VoIP services that are originated or terminated on the PSTN, such as ‘one-way’ services that allow end-users either to place calls to, or receive calls from, the PSTN”); *id.* ¶

The *Order* also specifically directs that LECs “tariff charges at rates equal to interstate access rates for toll VoIP-PSTN traffic” or “negotiate interconnection agreements specifying alternative compensation for that traffic.”³⁴ These provisions plainly state that all toll traffic between the PSTN and VoIP providers, both terminating and originating traffic, will be subject to interstate access rates.³⁵

As a result, it is not possible for the Commission to “clarify” that the VoIP-PSTN provisions of the *USF-ICC Transformation Order* mean anything other than what these terms plainly say: This new regime applies to both terminating *and* originating VoIP-PSTN access charges, setting these rates at interstate levels on an interim basis before phasing them out. Nor should the Commission reconsider that decision. The *Order* sensibly declined to saddle new IP services with the burden to support the crumbling legacy access charge system. That conclusion represents a fundamental tenet of the new regime.³⁶ This approach is also consistent with the Commission’s objective to phase out *all* access charges—both terminating and originating charges—over time. And the Act requires that the Commission eliminate originating access charges sooner rather than later in the new regime because all PSTN traffic is now under the

956 n. 1952 (referring to “IP-originated or IP-terminated VoIP traffic”); *id.* ¶ 963 (observing that “information the terminating LEC has about VoIP customers it is serving; can be used to identify traffic subject to the VoIP-PSTN compensation regime); *id.* ¶ 969 (the VoIP-PSTN framework includes “origination and termination charges”).

³⁴ *See id.* ¶ 960.

³⁵ *See* Windstream/Frontier Petition at 25 n.57 (arguing that, if the FCC had intended this result, it simply would have said so).

³⁶ *USF-ICC Transformation Order* ¶ 948.

reciprocal compensation provisions of Section 251(b)(5), which does not allow for originating access charges on a permanent basis.³⁷

Moreover, any concerns about identifying whether intrastate toll traffic terminates over VoIP facilities³⁸ can be addressed with negotiated or reported VoIP percentage factors, supported by traffic studies or similar methods. There is no reason that such techniques are any less reliable with PSTN-originated toll calls terminating over VoIP facilities than the reverse call path. The Commission expects carriers to use such techniques to determine the allocation of traffic subject to the new VoIP-PSTN pricing rules.³⁹

The Commission should affirm that the new regime in fact applies to both VoIP-PSTN terminating and originating access charges. While this is plain from the terms of the *USF-ICC Transformation Order* itself, parties are not consistently implementing the new VoIP-PSTN rates with respect to originating charges in state tariffs. Therefore, disputes are popping up all over the country. Verizon alone has been forced to file tariff objection letters in more than half of the states already, and additional disputes will surely follow—eventually reaching every state. Continued, endless litigation of this issue solves nothing, puts the industry and the Commission right back where things started with VoIP traffic, and will drain considerable resources that would be better spent implementing the new USF-ICC regime in a way that benefits consumers. To cut these disputes off, the Commission need merely affirm that the *Order* means what it says: The new VoIP-PSTN regime applies to both terminating and originating access charges. Prompt confirmation by the Commission is necessary. Some state commissions have indicated that they

³⁷ See *id.* at n.1976.

³⁸ See, e.g., Windstream/Frontier Petition at 27-28.

³⁹ See *USF-ICC Transformation Order* ¶ 963.

do not intend to address deficient intrastate tariffs that fail to properly implement the new federal VoIP-PSTN rules with respect to originating access charges. The Virginia State Corporation Commission, for example, recently notified Verizon that it will wait for a further FCC pronouncement (which some states expect will soon be forthcoming), now that the VoIP-PSTN originating access issue has been raised on reconsideration.⁴⁰

IV. THE COMMISSION SHOULD REJECT PROPOSALS TO PREVENT CERTAIN PROVIDERS FROM PARTICIPATING IN THE MOBILITY FUNDS.

The Commission should reject a request to preclude large wireless carriers from participating in the new Mobility Funds, and a more specific request to exclude Verizon Wireless and Sprint because of unrelated merger commitments.⁴¹ There is no basis to prevent a whole class of providers from participating in these new programs. This proposal, on its face, violates the Commission's competitive neutrality requirement for its USF programs adopted pursuant to 47 U.S.C. § 254(b)(7). Moreover, one of the Commission's challenges with these new programs, and competitive bidding USF distribution mechanisms generally, will be to provide the right incentives to *encourage* maximum participation by providers. Precluding participation by carriers that have demonstrated success and an ability to provide consumers with high-quality services makes no sense.

In addition, unrelated merger commitments should have no bearing whatsoever on whether or not Verizon Wireless and Sprint have the option to participate in the new mobility programs. These programs did not exist at the time those commitments were made. And, in any event, a key element of those commitments was a provision that makes clear the carriers were

⁴⁰ See Letter from William Irby, Virginia State Corporation Commission, Division of Communications, to Jennifer McClellan, Verizon (Jan. 27, 2012).

⁴¹ See Blooston Petition at 10-11.

not foreclosing an opportunity to participate in new programs. Verizon's commitment expressly provides that "[i]f the Commission adopts a different transition mechanism or a successor mechanism to the currently capped equal support rule in a rulemaking of general applicability, then that rule of general applicability would apply instead."⁴² Sprint made a similar commitment. The Blooston Petition ignores this aspect of the Verizon Wireless and Sprint commitments.

⁴² Letter from John T. Scott, III, Verizon, to Marlene H. Dortch, FCC, *Applications of Atlantis Holdings LLC and Cellco Partnership d/b/a Verizon Wireless for Transfer of Control*, WT Docket No. 08-95, at 1-2 (Nov. 3, 2008).

V. CONCLUSION.

The *USF-ICC Transformation Order* strikes a reasonable, careful balance of many competing interests in order to finally realize long-overdue USF and ICC reform in a fiscally responsible way. The Commission should resist calls to revisit these contentious issues yet again. In particular, the Commission should reject NECA's invitation to re-open the USF budget and various aspects of ICC rate reductions. The Commission should also affirm the symmetrical application of the new VoIP ICC rules and confirm that the new VoIP-PSTN regime applies to both terminating and originating access charges, and reject proposals to preclude certain wireless carriers from participating in the new Mobility Funds.

Respectfully submitted,

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