Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 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 THE UNITED STATES TELECOM ASSOCIATION

Jonathan Banks
Glenn Reynolds

607 14th Street, N.W.
Suite 400
Washington, D.C. 20005
(202) 326-7300

February 9, 2011

TABLE OF CONTENTS

Page

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 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
THE UNITED STATES TELECOM ASSOCIATION

I. INTRODUCTION AND SUMMARY

Pursuant to Section 1.429(f) of the Commission's rules and the Commission's *Public Notice*,[1] the United States Telecom Association ("USTelecom") respectfully submits its opposition to several petitions seeking reconsideration of the *Order*.[2]

---

[1] 47 C.F.R. § 1.429(f); *Connect America Fund*, WC Docket No. 10-90, 77 Fed. Reg. 3635 (Jan. 25, 2012) ("*Public Notice*").

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

The *Order* represents an important step in the Commission's efforts to reform the outdated and antiquated universal service and intercarrier compensation systems. Given the significance of the issues and the complexity of the subjects involved, it is hardly surprising that dozens of parties, including USTelecom, filed petitions for reconsideration or clarification of various aspects of the *Order*.

Although many of these petitions are thoughtful and warrant a hard look by the Commission, USTelecom opposes a limited number of requests for reconsideration and clarification.[3] Specifically, USTelecom opposes: (1) the request by the Public Service Commission of the District of Columbia ("DCPSC") for reconsideration of the Commission's decision to give price cap carriers the flexibility to allocate the eligible recovery of lost revenues associated with intercarrier compensation reform at the holding company level; (2) the request by NTCH, Inc. ("NTCH") to "reduce" the transition period for the elimination of legacy high cost support to incumbent local exchange carriers ("ILECs"); (3) NTCH's request to cap access charges at rates comparable to those in urban areas as a condition to the receipt of universal service support; (4) proposals by ViaSat, Inc. ("ViaSat") and the Wireless Internet Service Providers Association ("WISPA") to impose more onerous accountability measures on recipients of frozen high cost and Connect America Fund ("CAF") support; and (5) ViaSat's request that the Commission reconsider its timetable for implementation of the Remote Area Fund.

---

[3] USTelecom's opposition only addresses certain issues raised in the reconsideration petitions filed by the Public Service Commission of the District of Columbia ("*DCPSC Petition*"), the Wireless Internet Service Providers Association ("*WISPA Petition*"), ViaSat, Inc. ("*ViaSat Petition*"), and NTCH, Inc. ("*NTCH Petition*"). That USTelecom's not filing in opposition to other petitions for reconsideration or clarification should not be construed as an endorsement by USTelecom of the relief requested therein.

Each of these requests is misguided. The various rationales for these proposals are meritless, and many of the proposals are unworkable or otherwise inconsistent with the Commission's reform objectives. None of these requests meets the Commission's stringent standard for reconsideration, and each should be denied for the reasons explained below.[4]

II. DISCUSSION

A. The Commission Should Deny Reconsideration of Its Determination to Permit the Allocation of Eligible Recovery at the Holding Company Level.

The DCPSC seeks reconsideration of the Commission's determination that price cap carriers should have the flexibility to allocate the eligible recovery associated with intercarrier compensation reform at the holding company level. None of the DCPSC's arguments warrants reconsideration of this issue.

First, there is nothing "unfair" about permitting price cap carriers to determine at the holding company level how to allocate the eligible recovery among the Access Recovery Charges ("ARC") assessed by their incumbent LECs. *DCPSC Petition* at 2. As the Commission correctly concluded, such flexibility achieves two important objectives: first, it minimizes "the increase experienced by any one customer" by spreading recovery among a broader set of customers; and, second, it reduces the demand for funding from the CAF by enabling carriers to more fully recover the eligible recovery from affected end users. *See Order* ¶ 910. The DCPSC does not challenge either of these conclusions.[5]

---

[4] Reconsideration is appropriate only when the petitioning party either demonstrates a material error or omission in the underlying order or raises additional facts not previously known or existing that the Commission failed to consider. *See* 47 C.F.R. § 1.106(c); *WWIZ, Inc.*, 37 FCC 685, 686 ¶ 2 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied* 383 U.S. 967 (1966).

[5] There is no merit to the DCPSC's claim that the Commission's decision to permit recovery at the holding company level was arbitrary and capricious because the agency failed to

That there are no intrastate access charges in the District of Columbia does not warrant reconsideration. Circumstances across each jurisdiction vary considerably. For example, intrastate access and interstate access charges are already at parity in some states, and thus the "lost access revenues" in such jurisdictions would be less than in a state with intrastate access rates well above corresponding interstate levels. *See, e.g., Order* ¶ 795 (recognizing "so-called 'early adopter' states that have already undertaken reform of intrastate access charges …"). It would be impractical for the Commission to attempt to predict the effect of its reforms in each state, territory, and the District of Columbia. Furthermore, there is no need for the Commission to engage in this exercise given the safeguards that the Commission has put in place to protect all consumers regardless of where they live. *See, e.g., Order* ¶ 909 (implementing measures to "minimize the consumer burden" by limiting increases in the monthly ARC for residential and single line business lines as well as for multi-line business lines).

Indeed, as the DCPSC concedes, the ARC is not intended merely to recoup intrastate access revenues that are "lost" as a result of the Commission's reforms. *DCPSC Petition* at 2. On the contrary, the ARC is a transitional mechanism by which incumbent LECs are permitted to recover a portion of their total lost intercarrier compensation revenues resulting the Commission's reforms, including interstate and intrastate switched access as well as reciprocal compensation revenues. *See Order* ¶ 880. By focusing only on a single component of the ARC, the DCPSC improperly ignores the broader purpose of the Commission's cost recovery mechanism.

(footnote cont'd.)
provide notice and an opportunity to comment. *DCPSC Petition* at 4-5. Recovery at the holding company level was a part of the ABC Plan proposal, a proposal on which the Commission issued a public notice seeking comment, and on which a broad range of parties filed.

Second, there is no merit to the DCPSC's argument that the Commission "cited no legal authority" for its determination to provide price cap carriers with the flexibility to determine recovery at the holding company level. *DCPSC Petition* at 4. The ARC is "a transitional recovery mechanism" designed by the Commission as part of its overall plan to "transition" to bill-and-keep. *See Order* ¶ 847. The Commission specifically concluded that it possessed the legal authority to implement this transition plan, which includes the recovery mechanism about which the DCPSC complains. *Id.* ¶ 809 (noting that "the timing and steps for the transition to bill-and-keep requires us to make a number of line-drawing decisions," for which the courts have given the FCC "substantial deference") (citations omitted).

Third, the DCPSC takes issue with Commission's conclusion that carriers will not elect or be able to charge the ARC due in part to "competitive pressures." *PCPSC Petition* at 5 (citing *Order* ¶ 852). However, in so doing, the DCPSC offers a skewed picture of competition in the District of Columbia, focusing solely on "basic flat rate residential service" offered by wireline providers. Today, competition takes many forms, not the least of which are wireless and voice over Internet protocol services, which the DCPSC's analysis ignores. Indeed, wireless substitution in the District of Columbia has grown exponentially as the percentage of adults living in wireless only households increased from 13.8 percent in December 2007 to approximately 28 percent as of June 2010.[6] Additionally, the percentage of households in the District of Columbia with only a landline telephone is less than 11 percent, which underscores the folly of relying solely upon "basic flat rate residential service" offered by wireline providers

[6] Blumberg & Luke, *Wireless Substitution: Early Release Estimates From the National Health Interview Survey, January to June 2011*, Center for Disease Control National Center for Health Statistics, Table 1 (rel. Dec. 21, 2011) ("CDC 2011 Wireless Substitution Study") (available at http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201112.pdf)).

in assessing competitive communications alternatives in the District. CDC 2011 Wireless Substitution Study, Table 3.

B. <u>The Commission Should Deny NTCH's Request to "Reduce" the Transition Period for Existing Universal Service Support to Incumbent LECs.</u>

NTCH seeks reconsideration of the Commission's transition periods, claiming that the Commission has established overly "generous" glide paths for carriers affected by its universal service reforms. *NTCH Petition* at 10-11. NTCH is mistaken.

NTCH's proposal that the Commission "*reduce*" the transition period for existing ILEC universal service support ignores that the Commission did not establish any "glide path" for ILECs as part of CAF Phase II. Rather, it adopted a flash cut approach by which an ILEC's existing legacy support is immediately eliminated with the implementation of CAF Phase II, which is an issue upon which USTelecom has requested reconsideration. For the reasons explained in USTelecom's petition for reconsideration, the Commission should adopt a five year phase-down of existing universal service subsidies for ILECs, rather than the flash-cut approach embodied in the *Order* or the three-year period proposed by NTCH. *See* USTelecom Petition for Reconsideration at 5-8.[7]

---

[7] USTelecom's proposed five-year glide path is consistent with the approach established by the Commission for the phase down of CETC support. *See Order* ¶ 513. While insisting that "[m]any CETCs suffered massive and immediate cuts in support" as a result of the interim cap on CETC support originally established by the Commission, NTCH nonetheless proposes that CETC support be eliminated in three years rather than the five-year transition plan established in the *Order* – an apparent inconsistency NTCH does not bother to explain. In any event, the Commission expressly rejected a proposed three-year phase down of CETC support. *See Order* ¶ 513, n.853 (citing comments of Sprint Nextel "proposed 3-year phase down"). Merely rehashing an argument previously made and considered by the Commission is not grounds for reconsideration. *See e.g., Policies Regarding Detrimental Effects of Proposed New Broadcasting Stations on Existing Stations,* Memorandum Opinion and Order, 4 FCC Rcd 2276, 2277 ¶ 7 (1989) (reconsideration "will not be granted merely for the purpose of again debating matters on which the agency has once deliberated and spoken"); *Wireless Properties of Virginia,*

C. The Commission Should Deny NTCH's Request to Cap Access Charges at Rates Comparable to Those in Urban Areas As a Condition to Receipt of Universal Service Support.

While insisting that it is not "questioning the length of the transition period" associated with the Commission's intercarrier compensation reforms, NTCH nonetheless requests that the Commission reconsider its transition plan by requiring that LECs receiving universal service support "cap their access charges at levels comparable to those charged in urban areas." *NTCH Petition* at 11. The Commission should deny NTCH's request.

First, NTCH's desire for comparability in access charges between rural and urban areas ignores that, under the Commission's transition plan, all LECs must reduce their intrastate terminating switched end office and transport rates and reciprocal compensation to parity with interstate access rates by July 1, 2013. With this deadline less than 18 months away, there is no justification – and NTCH offers none – for a more rapid transition for reductions in intrastate access charges.

Second, NTCH's rationale in attempting to condition a LEC's receipt of universal service on reduced access charges is unpersuasive. Although NTCH asserts that LECs receiving high-cost support should "offer the same benefits to their competitors that USF funding makes available for their consumers," *NTCH Petition* at 11-12, this assertion ignores that universal service support is intended "to benefit the customer, not the carrier." *Order* ¶ 221 (citations omitted). The same is true for the traditional intercarrier compensation regime, which historically served as an implicit subsidy for ILECs to maintain affordable rates for local exchange service. *Id.* ¶ 853 (intercarrier compensation revenues "have traditionally been a

(footnote cont'd.)
Inc., Assignor and Nextel Spectrum Acquisition Corp., Assignee, DA 08-1085, Order on Reconsideration, 2008 FCC LEXIS 3884, at *17 (May 7, 2008) (denying reconsideration petition that merely "rehashes arguments previously considered and rejected").

means of having other carriers (who are now often competitors) implicitly support the costs of the local network"). Under the circumstances, the Commission should reject NTCH's transparent attempt to utilize the Commission's transition mechanism for its own financial benefit.

Third, acceptance of NTCH's proposal would actually harm customers by placing financial strain on the CAF. If ILECs were required to reduce more rapidly their current access charges, the amount of their eligible recovery would increase. Because the Commission limited an ILEC's ability to recover lost intercarrier compensation revenues from its end user customers, NTCH's proposal would result in ILECs seeking additional CAF support, which would jeopardize the Commission's ability to utilize the CAF to implement its other universal service reforms within its current budget. *See Order* ¶ 855.

The Commission's intercarrier compensation transition timeline is thorough and balanced. In establishing this timeline, the Commission weighed carefully the impacts on carriers and consumers alike. *Order* ¶ 802 (finding that consumers would benefit from the Commission's multi-year transition, "which enables their providers to adapt to the changing regulatory and technical landscape and will enable a faster and more efficient introduction of next-generation services"). As the Commission correctly observed, its "transition periods strike the right balance between our commitment to avoid flash cuts and enabling carriers sufficient time to adjust to marketplace changes and technological advancements …." *Id.* NTCH's request for reconsideration would disturb this balance and thus should be denied.

D. <u>The Commission Should Not Reconsider Its Accountability And Oversight Measures For The Receipt of CAF And Frozen High Cost Support.</u>

The *Order* establishes stringent accountability requirements and "vigorous ongoing oversight" to ensure that CAF and frozen high cost support is used appropriately. *Order* ¶ 568.

For example, ETCs are subject to extensive certification and reporting obligations. *Id.* ¶¶ 576-614. ETCs also face meaningful consequences if they fail to comply with these obligations or other terms and conditions of support, including "enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designation, and suspension or debarment." *Id.* ¶ 618 & Appendix A, Section 54.320(c). This comprehensive framework will more than adequately ensure compliance with the Commission's rules regarding the use of CAF and frozen high cost support.

Under the circumstances, the Commission should reject calls for additional "accountability measures" that would merely make broadband deployment more expensive, such as ViaSat's proposal to "[r]equire all price cap ILECs to post a performance bond in each state in which they a 'statewide election' to receive support." *ViaSat Petition* at 13-14. ViaSat offers no basis for its apparent concern that a price cap carrier making a statewide election to receive CAF support will not spend the funding consistent with its regulatory obligations and fails to explain why the Commission's existing tools – including forfeitures and debarment – are insufficient to ensure that such obligations are met.

ViaSat's proposal is erroneously premised upon the Commission's requirement that satellite licensees post a performance bond regarding satellite construction milestones. *See id.* (citing 47 C.F.R. §§ 25.164-.165). The Commission adopted a performance bond requirement for satellite licensees to "help prevent warehousing of the orbit/spectrum resource, by ensuring that satellite licenses have the financial resources necessary to construct and launch a satellite."[8]

[8] *See Space Station License Rules and Policies*, First Reconsideration Order and Fifth Report and Order, 19 FCC Rcd 12637, ¶ 12 (2004).

Spectrum warehousing is hardly a concern for an ILEC that accepts CAF support to build out broadband to unserved areas.

Furthermore, requiring that an ILEC post a performance bond as a condition to deploying broadband in uneconomic areas would be counterproductive. Such a requirement would impose additional costs that would only cause an ILEC to elect not to seek CAF support or to increase the size of its bid. In either case, ViaSat's proposal would mean fewer CAF awards, which would undermine the Commission's objective of "delivering robust, scalable broadband" in unserved areas. *Order* ¶ 127.[9]

Similarly, the Commission should reject WISPA's proposal to alter the Commission's certification requirements for recipients of frozen high cost support. *WISPA Petition* at 9. The Commission's existing requirement that carriers certify that "a substantial portion" of frozen high cost dollars "went to areas without an unsubsidized competitor" is adequate to ensure that ETCs receiving frozen high cost support will invest such funds "in a manner consistent with achieving universal availability of voice and broadband." *Order* ¶ 591.

Although the Commission does not define "substantial portion," the narrow certification proposed by WISPA is unnecessary and would constrain a carrier's flexibility in meeting the broadband needs in an unserved area. *See WISPA Petition* at 9 (proposing to limit the certification to "investments in middle-mile feeders"). It is important that the Commission adopt an approach that adequately provides a carrier with flexibility in making broadband investments

[9] As USTelecom explained in connection with the Commission's proposal that ETCs receiving CAF funding should obtain an irrevocable letter of credit, such a requirement would create a significant financial hardship that could negatively impact a CAF recipient's credit ratings and liquidity and would seriously jeopardize a carrier's ability to conduct its business. *See* Comments of the United States Telecom Association, *Connect America Fund*, WC Docket No. 10-90, at 21-22 (filed Jan. 18, 2012). The same is true for ViaSat's proposal regarding performance bonds.

that may benefit multiple locations, while also appropriately recognizing the difficulty in determining "unserved" areas given the dynamic nature of the market. *See Order* ¶¶ 150 & 591.

To the extent WISPA contends that a price cap carrier should have an ongoing obligation to ensure the continued accuracy of its certification, the Commission should reject this contention. *WISPA Petition* at 9-10. It is enough that a price cap carrier certify that it used frozen high-cost support to provide broadband service in census blocks where at least 50 percent of the locations were shown on the National Broadband Map as unserved at the time the investments were made. Notwithstanding WISPA's claims to the contrary, it should be irrelevant that an unsubsidized competitor subsequently began providing broadband service to more than 50 percent of those locations or that the National Broadband Map turned out to be wrong. Any other approach would put the price cap carrier in the untenable position of certifying to competitive circumstances it cannot control or certifying that the National Broadband Map is accurate, neither of which is realistic.

Given that the Commission's existing mechanisms are more than adequate to make certain that frozen high-cost and CAF support is spent consistent with applicable rules, additional proposals to ensure compliance are unnecessary and counterproductive. Accordingly, the Commission should deny reconsideration of these issues.

E. The Commission Should Not Reconsider Its Timetable To Implement the Remote Area Fund.

ViaSat requests that the Commission reconsider its timetable to finalize the Remote Area Fund this year and implement the fund next year. *ViaSat Petition* at 19. The Commission should deny this request because it is administratively unworkable given the other significant reform objectives the Commission seeks to achieve.

ViaSat disputes the need for CAF Phase I, claiming that the funds would be better spent on remote areas where "the cost of providing service is typically much higher for terrestrial networks in the hardest-to-serve areas of the country than in less remote but still rural areas." *Id.* (quoting *Order* ¶ 533). However, as the Commission correctly recognized, CAF Phase I will provide an "immediate boost" to broadband deployment by permitting price cap carriers to leverage existing infrastructure to serve areas "beyond what carriers would otherwise undertake, absent this reform." *Order* ¶ 137. Unfortunately, the same cannot be said about the Remote Area Fund. Before the Remote Area Fund could even be implemented, the Commission must resolve a number of fundamental issues regarding the form of support, eligible geographic areas and providers, and public interest obligations – issues that will not be resolved until late this year, at the earliest.

Furthermore, although the Commission has set aside $100 million for the Remote Area Fund, this funding cannot be made available until after legacy high-cost support has begun to be phased out, if the Commission is to remain within its established $4.5 million budget. *Order* ¶ 125. Establishing the Remote Area Fund at the same time as CAF Phase I or creating an interim remote fund, as ViaSat suggests, would disrupt the Commission's carefully balanced objective of establishing a budget for the high-cost program in order to "provide the greatest certainty and predictability to all stakeholders." *Id.*

III. CONCLUSION

For the foregoing reasons, the Commission should deny the petitions for reconsideration.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By: ______________________________

Jonathan Banks
Glenn Reynolds
607 14th Street, N.W.
Suite 400
Washington, D.C. 20005
(202) 326-7300

February 9, 2012

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2011, a copy of the foregoing was sent via United States mail, postage prepaid, to the following:

Richard A. Beverly, General Counsel
Veronica M. Ahern, Deputy General Counsel
Lara Howley Walt
Public Service Commission of the
District of Columbia
1333 H Street, NW
Suite 200, West Tower
Washington, DC 20005

Attorneys for the Public Service Commission of the District of Columbia

Keven Lippert
Vice President and General Counsel
ViaSat, Inc.
6155 El Camino Real
Carlsbad, CA 92009

Lisa Scalpone
Vice President and General Counsel
WildBlue Communications, Inc.
349 Inverness Drive South
Englewood, CO 80112

John P. Janka
Jarrett S. Taubman
Latham & Watkins LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, DC 20004-1304

Attorneys for ViaSat, Inc.

Donald J. Evans
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Attorneys for NTCH, Inc.

Stephan E. Coran
Jonathan E. Allen
Rini Coran, PC
1140 19th Street, N.W., Suite 600
Washington, DC 20036

Attorneys for the Wireless Internet Service Providers Association