

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| 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 |

REPLY COMMENTS OF VERIZON¹

Many parties in this continuing proceeding find common ground on one critical point: To lay a solid foundation for the Connect America Fund (CAF) and deliver the promise of broadband to all Americans the Commission must eliminate eligible telecommunications carrier (ETC) voice service obligations where a provider does not receive support. Maintaining these outdated, unnecessary legacy obligations will hamper the transition to more efficient technologies and participation in the CAF. Moreover, the Commission should *encourage* providers to migrate to next-generation technologies and continue to be clear that ETC requirements (old or new) can be satisfied using any technology. A handful of commenters suggest that the Commission should merely layer new broadband obligations on top of existing

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

voice service requirements. Such a short-sighted approach is unworkable and will impede the successful roll-out of the new universal service fund (USF) broadband programs.

DISCUSSION

1. Providers and other commenters recognize that maintaining ETC voice service obligations in areas that receive no legacy high cost funding or new CAF support is inconsistent with the Commission's statutory obligations, and is simply a non-starter if the Commission wants to encourage an efficient transition away from old technologies. The Indiana Utility Regulatory Commission, for example, acknowledges that legacy service obligations cannot continue when funding is eliminated. "As a general rule, requiring continuation of mandated service in the face of diminishing financial support is not appropriate public policy." Indiana Utility Regulatory Commission Comments at 5.

Similarly, providers of various sizes that disagree on some aspects of universal service and intercarrier compensation (ICC) reform are united in their view that the new USF-ICC regime cannot be successful unless the Commission makes a clean break from legacy ETC voice service obligations where funding is not provided. Windstream urges the Commission to closely align ETC service obligations with supported areas to avoid unfunded mandates. "ETCs should automatically be relieved of their legacy ETC obligations and ETC designations in those geographic areas in which they do not receive either legacy high-cost support or new CAF support. . ." Windstream Comments at 32; *see also* Frontier Comments at 8-10 ("In such a situation where a carrier receives no high-cost funding it would be illogical and patently unfair to saddle those providers with monopoly-era regulations, especially as all areas will necessarily be competitive because funding will not go to areas with unsubsidized competitors."); CenturyLink

Comments at 9-10; United States Telecom Association Comments at 6-7; AT&T Comments at 3-17.

Likewise, T-Mobile correctly points out that, as a practical matter, if the Commission does not eliminate legacy ETC voice service obligations in areas where no funding is provided, wireless carriers may be forced to seek ETC relinquishments en masse, which will hinder participation in both the CAF and the new mobility funds. “[W]here support is reduced or eliminated, carriers’ concomitant service obligations also should be reduced or eliminated commensurately. Carriers should not be forced to choose between full performance of their service commitments and relinquishment of ETC status. . .” T-Mobile Comments at 9.

There is no doubt that unnecessary legacy ETC obligations divert resources away from broadband deployment and do not make sense in an environment where consumers have access to voice services from multiple providers over different platforms including wireless and VoIP. Moreover, one of the underpinnings of the *USF-ICC Transformation Order* is a Commission policy to encourage migration to next-generation technologies.² And, accordingly, the Commission should continue to be clear that—at a minimum—all ETC requirements can be satisfied using any technology. *See, e.g., USF-ICC Transformation Order* ¶ 80 (“ETCs may use any technology in the provision of voice telephony service.”).

In addition, requiring carriers to provide service in high cost areas in the new USF regime with no funding at all would be unlawful under the Act. By definition, the purpose of the “eligible telecommunications carrier” designation is to identify those carriers that are, in fact, *eligible* to receive universal service funding. As Section 214(e)(1) directs, a “common carrier

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, ¶ 3 (Nov. 18, 2011) (“*USF-ICC Transformation Order*”) (“Fixed and mobile broadband have become crucial to our nation’s economic growth, global competitiveness, and civic life.”).

designated as an eligible telecommunications carrier . . . *shall be eligible to receive universal service support.*” 47 U.S.C. § 214(e)(1) (emphasis added). Under the new framework where only one carrier will be designated as an ETC for a particular service area, many existing ETCs will not be *eligible* to receive universal service funding and, in fact, will be categorically barred from receiving it. Maintaining these obligations where there is no funding would also violate Section 254, which requires the Commission to design its universal service programs so that support is “sufficient” to enable providers to offer the services deemed “universal.” 47 U.S.C. § 254(b)(5), (e)-(f). In addition, forcing an unsupported competitor to provide service at a loss in competition with a CAF recipient would violate the Takings Clause, Section 254’s mandate that universal service policies be “equitable and nondiscriminatory,” and the Commission’s competitive neutrality policy principle. *Id.* § 254(b)(4), (d), (f).³

2. Those parties that suggest the Commission should make no changes to legacy ETC voice service obligations get both the policy and the law wrong. For instance, the NASUCA Commenters offer virtually no analysis but oppose any change to ETC voice service obligations at all, stating “under no circumstances should reduced [financial] support be accompanied by a relaxation of voice service obligations.”⁴ The reason? According to the NASUCA Commenters the Commission must steadfastly prohibit carriers from making rational business decisions. “The idea that obligations to serve are eliminated for carriers that do not receive support means that for each carrier it will be an individual economic (business-case) decision whether to accept

³ See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶¶ 43-55 (1997).

⁴ NASUCA, Maine OPC, Rate Counsel and TURN (“NASUCA Commenters”) Comments at 57 (de-emphasis of text added).

support or to escape the obligations,” which the NASCUA Commenters suggest will leave consumers unprotected. *Id.* This makes no sense.

Fundamental to the new USF regime is the Commission’s selection—ultimately through competitive bidding—of a single supported universal service provider in each subsidized area that will be required to offer both voice and broadband service. This standard procurement approach to the USF is long overdue and means that in the long-run the Commission will define service expectations in particular areas, solicit bids, and select a provider to fulfill those obligations. Consumers in those areas will be *more* “protected” than they are under today’s unworkable, patchwork system because the Commission will have one-stop shopping for monitoring and enforcement and can remedy any deficiencies by revoking funding and selecting another USF provider. In this environment, carriers that do not receive funding will of course need to make business decisions about how best to stay competitive. That is the way the Commission’s new system is appropriately designed. Moreover, legacy ETC voice service obligations are simply not necessary given widespread access to intermodal voice services (even in rural areas), and competition from other ETCs that will in many instances have a “business case” to continue offering service without federal subsidies. *See Verizon Comments at 9-12.*

Those parties that suggest the Commission lacks statutory authority to modify ETC obligations where funding is eliminated are equally misguided. The Massachusetts Department of Telecommunications and Cable, for example, asks the Commission to focus not on eliminating ETC voice service obligations in unfunded areas but on “non-binding federal guidelines” for the states to use to “redefin[e] ETC service areas” because only states can “redefine a service area or revoke a carrier’s ETC designation” in most cases. Massachusetts Department Comments at 27. That is wrong. The Commission clearly has the authority—indeed

the statutory duty (*see* above)—to eliminate ETC voice service obligations where a provider does not receive support.

The Commission can exercise its Section 201 rulemaking authority to limit the definition of a “service area” to mean a region where an ETC receives universal support. Although Section 214(e)(5) provides that an ETC’s “‘service area’ means a geographic area established by a State commission . . . for the purpose of determining universal service obligations and support mechanisms,” Section 201(b) of the Communications Act—as interpreted in *Iowa Utilities Board*—authorizes the Commission to adopt rules guiding the states’ exercise of the duties allocated to them elsewhere in Title II of the Act. 47 U.S.C. § 214(e)(5).⁵

Section 254(f) also separately authorizes the Commission to adopt a rule that limits ETC “service areas” for purposes of determining where legacy obligations and designations apply. Section 254(f) prohibits states from adopting universal service policies that (i) are “inconsistent with the Commission’s rules to preserve and advance universal service” *or* (ii) do not require “[e]very telecommunications carrier that provides intrastate telecommunications services [to] contribute, on an equitable and nondiscriminatory basis . . . to the preservation and advancement of universal service in that State.” 47 U.S.C. § 254(f).

In addition, the Commission could exercise its authority under Section 10 of the Act to forbear from Section 214(e) to the extent the latter requires ETCs to offer service in areas where they receive no universal service support. 47 U.S.C. § 160. ETC service obligations arise from Section 214(e)(1), which provides that ETCs “shall, *throughout the service area for which the designation is received* . . . offer the services that are supported by Federal universal service

⁵ *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 377-86 (1999). Section 201(b) authorizes the Commission to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of” the Communications Act. 47 U.S.C. § 201(b).

support mechanisms under section 254(c)[.]” 47 U.S.C. § 214(e)(1) (emphasis added). With respect to ETCs that receive no high cost or CAF support for some or all locations within their designated “service areas,” the Commission should forbear from any requirement that those ETCs offer services “throughout the service area for which the [ETC] designation is received.”

Id.

Finally, the Commission could address these issues by reinterpreting the language of Section 214(e)(1). This Section provides that ETCs “*shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received . . . offer the services that are supported by Federal universal service support mechanisms* under section 254(c)[.]” 47 U.S.C. § 214(e)(1) (emphasis added). Section 214(e)(1) also can be read to mean that a carrier’s obligation to offer service applies *only* in those geographic areas where the carrier is receiving support – *i.e.*, where the services “are supported.” This interpretation of the statutory language appropriately focuses on the italicized text, which makes clear that service obligations should not be imposed without regard to whether a carrier is “eligible” for support and whether the services it provides “are supported.”

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The Commission should move forward with implementation of the CAF and other universal service reforms consistent with the recommendations discussed herein and in Verizon's initial comments.

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