

**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

**REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION AND
CLARIFICATION**

Accipiter Communications Inc. (“Accipiter”), pursuant to Section 1.429(g) of the Commission’s rules, 47 C.F.R. § 1.429(g), hereby responds to the “Comments on Request for Reconsiderations [*sic*] by the National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel” (“NASUCA”) submitted on February 9, 2012 (the “NASUCA Comments”). For the reasons stated herein, the Commission should afford no weight to the portion of the NASUCA Comments that is directed against the Petition Accipiter submitted on December 29, 2011 (the “Accipiter Petition”) seeking reconsideration and clarification of the Commission’s *Report and Order*, FCC 11-161, adopted on October 27, 2011 and released on November 18, 2011 (the “*Report and Order*”).

NASUCA essentially argues that the issues raised in the Accipiter Petition would be better addressed through a request for waiver, and asks that the Commission deny the Accipiter Petition and direct Accipiter, instead, to seek a waiver of the relevant rules.¹ NASUCA thus conflates two distinct remedies which are available to Accipiter and ignores much of the substance of Accipiter's Petition. Should the Commission fail to grant the Accipiter Petition, Accipiter certainly retains the right to seek a waiver of certain of the Commission's rules which, applied to Accipiter without alteration or waiver, would have a serious economic effect on the company. Accipiter's ability to seek a waiver at some point in the future, however, does not change the fact that the Commission's failure to adequately justify and provide the underlying basis for its decision was arbitrary and capricious, violates Accipiter's rights under the Administrative Procedure Act as well as Accipiter's right to due process of law, and may be confiscatory. These fundamental issues concern the legality in general of the Commission's rules themselves, rather than their applicability to any particular company and it is clear that other companies are similarly affected.

NASUCA also ignores the fact that Accipiter's Petition, in addition to seeking reconsideration of the rules the Commission adopted, also sought clarification as to how certain of those rules will actually be applied.² In particular, Accipiter pointed out that, when the regression caps the Commission has imposed are implemented on July 1, 2012, it is not clear whether the caps will apply to Accipiter's 2010 cost study, and thus affect revenues received in July 2012 or apply to Accipiter's 2012 costs which, in turn, will affect USF revenues received in 2014. Because Accipiter cannot, due to this lack of clarity, even be fully confident of the

¹ NASUCA Comments at 21.

² Accipiter Petition at 11.

magnitude of the effect of the Commission's *Report and Order*, NASUCA's suggestion to seek a waiver of unclear rules that have not yet been implemented rings hollow. Further, Accipiter has no ability to estimate how long it will take to secure a waiver.

In short, regardless of Accipiter's future ability to seek a waiver of the Commission's rules to allow Accipiter a reasonable opportunity to grow out of its current cost structure, Accipiter's Petition demonstrates fundamental flaws in the Commission's approach in developing its *Report and Order*, and Accipiter is entitled to a decision on the merits of its Petition. Furthermore, until the Commission's rules are finalized and clarified, it is not even certain that Accipiter will ultimately require a waiver, or precisely what Accipiter would be asking the Commission to waive.

For the foregoing reasons, Accipiter respectfully requests that the Commission reconsider the *Report and Order* and provide reasonable clarification regarding the implementation of the *Report and Order* as requested in the Accipiter Petition.

Respectfully Submitted

/s/ Patrick Sherrill

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