

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
)	

Reply of Cox Communications, Inc.

Cox Communications, Inc., by its attorneys, hereby submits its reply to the petitions for reconsideration of the Commission’s *USF/ICC Transformation Order*.¹ The Commission should resist efforts to undo key elements of the *USF/ICC Transformation Order*, which takes the right first steps to redirecting the universal service support system from legacy voice services to broadband and stabilizing a fast-deteriorating system of intercarrier compensation. The balance struck in that order was rough but necessary, and the changes proposed now by many parties would shift that balance even further toward incumbent local exchange carriers (“LECs”) and particularly toward rural incumbent LECs. The complaints of the rural incumbent LECs are

¹ Connect America Fund, *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 *et al.*, FCC 11-161 (rel. Nov. 18, 2011) (the “*USF/ICC Transformation Order*”). The Commission announced the deadlines for oppositions and replies to petitions for reconsideration in a public notice released on February 3, 2012. Public Notice, *Comment Cycle Established for Oppositions and Replies to Petitions for Reconsideration of the USF/ICC Transformation Order*, DA 12-130 (rel. Feb. 3, 2012).

particularly troubling, considering that the order imposes only minimal requirements on them and allows them to retain far more of their current subsidies than any other providers.

Cox's interests in this proceeding are significant as a pioneer in the competitive local telephone and broadband services marketplace. Cox also is both a contributor to the federal universal service fund and a recipient of universal service support, through the schools and libraries, Lifeline and high cost programs. As a provider of competitive, unsubsidized broadband service, Cox is particularly concerned about changes to the regime adopted in the *USF/ICC Transformation Order* that would increase the burdens on the Connect America Fund or that would provide subsidies for service in areas that already have unsubsidized broadband service.

I. The Commission Should Not Adopt Changes to the High Cost Rules that Would Increase Subsidies to Incumbent LECs.

The *USF/ICC Transformation Order* correctly focused on creating a new regime to expand broadband service to unserved areas without increasing the burden of universal service support.² This is a delicate balance. One important element of that balance is a recognition that the Commission should not try to ensure that support would benefit any particular business model. The Commission also understands that maintaining a system designed to support voice service would not serve the long-term public interest need for broadband.³ Nevertheless, many incumbent LECs have sought reconsideration of the order, in an effort to maintain the current subsidy system or even to receive more support beyond what they get today. The Commission should rebuff those efforts.

² *USF/ICC Transformation Order*, ¶ 17-32. The Commission's concern about ensuring that the universal service fund is maintained at reasonable levels also is reflected in its recent Lifeline order. *See Lifeline and Link Up Reform and Modernization, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket Nos. 11-42 *et al.*, FCC 12-11 (rel. Feb. 6, 2012), ¶¶ 37, 355-60.

³ *USF/ICC Transformation Order*, ¶ 43-45.

A. There Is No Need to Modify the Caps Adopted in the *USF/ICC Transformation Order*.

First, the Commission should not modify its rules to respond to concerns that affect only a handful of carriers. The most obvious example of such a request is Accipiter's argument that the Commission should eliminate the cap on support for incumbent LECs in growing markets.⁴ While the merits of Accipiter's request are doubtful, the information it provides to the Commission is largely carrier-specific.⁵ As a consequence, Accipiter's petition provides no basis to change the rules; rather, the information provided by Accipiter is much more like what would be found in a waiver petition. Since the Commission already has created a waiver process, there is no reason to change the rules.⁶ Indeed, growth by itself is not an indication that more support is needed, as in most cases growth reduces a carrier's per-line and per-customer costs.

The Commission also should not increase or remove the overall cap on the Connect America Fund. Parties like NECA that seek to lift the cap are, in essence, asking for a blank check with no evidence that additional funds are necessary.⁷ Rather, and as the Commission recognized in the *USF/ICC Transformation Order*, the cap protects consumers and businesses from excessive costs incurred without regard for actual benefits.⁸

Similarly, ITTA's complaint about capital expense and operating expense caps fails to account for the Commission's findings about the risks of excessive spending by rural incumbent

⁴ Petition for Reconsideration and Clarification of Accipiter Communications, Inc.

⁵ For instance, Accipiter describes claimed barriers to entry in a portion of the market it serves and the Commission's denial of Accipiter's request for waiver of the study area rules. *Id.* at 5-7.

⁶ *USF/ICC Transformation Order*, ¶ 539-544; *see also* Comments on Request for Reconsideration by the National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel ("NASUCA Comments") at 21.

⁷ Petition for Reconsideration and Clarification of the National Exchange Carrier Association, Inc.; Organization for the Promotion and Advancement of Small Telecommunications Companies; and Western Telecommunications Alliance ("Rural Associations Petition") at 6-19.

⁸ *See USF/ICC Transformation Order*, ¶ 124; *see also* Opposition of Verizon at 4.

LECs.⁹ ITTA does not explain, for instance, exactly how the imposition of caps based on reasonable levels of expenses will harm the ability of rural incumbent LECs to provide service, rather than merely reining in excessive expenses or forcing those LECs to become more efficient. Moreover, the underlying assumption that *any* cuts in support will be harmful is not supported by any evidence.

B. The Requirements Governing Areas Eligible for Support and Deployment Should Not Be Altered.

Several parties propose changes to the rules that would reduce the effectiveness and efficiency of the Connect America Fund by loosening the standards for areas eligible for support or for providers receiving support. These efforts should be rejected.

For instance, both CenturyLink and the ITTA support modifying the rules to create a rebuttable presumption that funding is available for “any area” that service providers “believe to be unserved.”¹⁰ Their reasoning is that the National Broadband Map may contain inaccuracies, and therefore should be disregarded until proved accurate.

This, of course, is entirely backwards. The broadband map has been developed by collecting data about actual service, including areas served, speeds and other detailed information. While it does contain inaccuracies, the presumption should be that it is accurate. Moreover, if a service provider believes an area is unserved, it has ample opportunity to correct the record, first through the broadband mapping process, and then through a showing to the Commission.¹¹ By contrast, the approach advocated by CenturyLink and ITTA would be quite burdensome for existing service providers, which would have to monitor filings at the Commission to ensure that a competitor does not falsely claim that an area has no broadband

⁹ See Opposition of the Independent Telephone & Telecommunications Alliance (“ITTA”) at 6-7; see, e.g., *USF/ICC Transformation Order*, ¶¶ 210 (noting need for incentives to operate efficiently), 227 (noting desirability of accountability).

¹⁰ ITTA Petition at 4; Opposition of CenturyLink (“CenturyLink Opposition”) at 6-8.

¹¹ *USF/ICC Transformation Order*, ¶ 146.

service. This approach would create a risk that support would be directed to places where broadband actually is available.

The Commission also should not adopt any changes to the current rules governing deployment obligations and accountability. For instance, CenturyLink's suggestion that service providers should be able to limit their supported services to areas in unserved census blocks that also are within their current service areas should be rejected. This proposal would reduce the benefits of Connect America Fund support significantly by limiting broadband to the areas where it is cheapest to deploy, leaving customers in the fringe areas unserved.¹² Indeed, the point of using census blocks is to break free from the current regime, which is built around incumbent LEC service areas and wire centers, and to provide service to all unserved customers.

For similar reasons, proposals to reduce or eliminate reporting and accountability requirements should be rejected.¹³ These obligations are in place to ensure that funds are spent appropriately to support broadband. Removing them would create a risk that the funds will not be spent to further the Commission's goals. Further, as the National Cable and Telecommunications Association explains, these obligations apply only when a carrier chooses to accept subsidies.¹⁴ Any carrier that does not wish to comply with the requirements to actually build broadband facilities, provide service on the terms specified by the Commission and report accurately on its progress should not accept funding.

¹² CenturyLink Opposition at 9-10.

¹³ See, e.g., Rural Associations Petition at 2-6.

¹⁴ Comments of the National Cable & Telecommunications Association at 8-9.

C. The Price Floor Rule Should Remain in Place.

Several parties have argued that the Commission should repeal the price floor rule.¹⁵ The gist of their arguments is that any price increases will be burdensome; Accipiter even argues that its low prices for voice service subsidize broadband.¹⁶

These arguments do not address the fundamental concern identified by the Commission, which is that customers in high cost areas should not receive preferential rates compared to customers in other areas of the country.¹⁷ Any other approach is wasteful, as it imposes subsidies beyond those required to make rural service comparable to non-rural service. Further subsidizing below-market rates for local telephone service confers competitive advantages on both carriers and consumers in high cost areas.¹⁸

II. The Commission Should Adopt Rule Changes that Will Facilitate Competition in High Cost Areas and Reduce Unnecessary Regulatory Burdens.

While many of the proposed changes to the rules would dilute the benefits of the Connect America Fund or increase costs with no additional benefit, there are two proposals the Commission should adopt. First, the Commission should standardize the process for obtaining eligible telecommunications carrier (“ETC”) designation. Second, the Commission should reduce (and eventually eliminate) reporting obligations for competitive LECs that are receiving legacy support that will be eliminated under the new regime.

First, as WISPA proposed, and as Cox suggested in its initial comments in this proceeding, the Commission should adopt uniform, national requirements for obtaining ETC status.¹⁹ Standardized rules will make it easier for carriers to qualify as ETCs, both because they

¹⁵ See Accipiter Petition at 20-21; CenturyLink Opposition at 16-18.

¹⁶ Accipiter Petition at 20.

¹⁷ *USF/ICC Transformation Order*, ¶ 235.

¹⁸ The Commission should not forget that some companies do compete with carriers in high cost areas. If rates below market levels are subsidized, such competition becomes significantly more difficult.

¹⁹ Petition for Reconsideration of the Wireless Internet Service Providers Association (“WISPA”) at 5; Comments of Cox (filed Apr. 18, 2011) at 8-9.

will know what they have to do before they apply and because they can reduce the resources necessary to prepare ETC applications. The more providers that qualify as ETCs, the more competition there will be for Connect America Fund support once the bidding process begins, and the lower support costs will be.

Second, the Commission should phase down ETC obligations for service providers that are losing their legacy universal service support, as proposed by the United States Telecom Association.²⁰ Compliance with these obligations is unnecessary when support no longer is being provided, and it is important for the Commission to reduce regulatory burdens when there is no benefit to be gained. As AT&T notes, imposing these obligations when no support is available also would impose significant costs, and even could force carriers to operate at a loss.²¹ As a recipient of legacy support, Cox is particularly concerned that requiring ongoing compliance with the reporting and other obligations of receiving support would be burdensome.²² Further, those obligations should be addressed immediately, rather than waiting until support is fully eliminated.²³

III. The Commission Should Not Modify the Current Reciprocal Treatment of Terminating and Originating Access for Voice over IP Services.

Some rural carriers have argued that the Commission should modify its determination that originating access charges are subject to the new rules setting rates for VoIP-PSTN traffic

²⁰ Petition for Reconsideration of the United States Telecom Association (“USTA Petition”) at 15-17.

²¹ Comments of AT&T at 3-9.

²² Contrary to the suggestion of the United States Telecom Association, however, the Commission should not limit or reduce the new reporting requirements adopted in the *USF/ICC Transformation Order*. USTA Petition at 17-24. The existence of these requirements is one of the reasons the Commission can and should streamline the ETC designation process, as they provide valuable safeguards to ensure that funding is spent properly. *See supra* Section I.B.

²³ Comments of AT&T at 7. Cox notes that existing carrier of last resort obligations are not affected by elimination of legacy high cost funding for voice service. However, those obligations do not apply to broadband service, and do not provide any basis for favoring any LECs in awarding broadband support.

equal to the interstate rate for the service provider.²⁴ These carriers would apply the rule only to traffic that originates as voice over IP traffic, and would apply standard rates to traffic that originates in time division multiplexing format. The Commission should retain the rule for all VoIP-PSTN traffic.

First, and most significantly, these carriers provide no basis for asymmetric treatment of VoIP-PSTN traffic based on the direction the traffic flows, other than that they wish to retain higher revenues.²⁵ None of the parties seeking reconsideration demonstrated that the lost revenues would be significant, let alone critical to their operations. In the absence of a meaningful rationale for reconsideration, there is no reason to change the rule.

In fact, symmetrical treatment is far more reasonable than setting different rates depending on the direction the traffic is sent. It ensures that all voice over IP traffic is treated the same, avoiding discrimination issues. Symmetrical treatment also reduces arbitrage opportunities and the incentive for parties to send traffic using a particular technology simply to increase their revenues. In fact, the Commission specifically recognized the potential for “marketplace distortions” if it adopted an asymmetrical approach.²⁶ Each of these reasons is sufficient to support the rule as adopted.

While the rural carriers want more money for originating VoIP-PSTN traffic, AT&T argues that VoIP networks may not charge for origination of VoIP-PSTN traffic at all.²⁷ The Commission should reject AT&T’s arguments as well. First, AT&T assumes the premise of its argument, which is that voice over IP providers could not charge originating access prior the

²⁴ See Petition for Reconsideration and/or Clarification of Frontier Communications and Windstream Communications at 21-29; Rural Carrier Association Petition at 34-35.

²⁵ Cox notes that the Frontier/Windstream petition, in particular, relies on the theory that the Commission should not have altered the ABC Proposal because that was the deal they agreed to support. Frontier/Windstream Petition at 25-27. The support of one party or another is not a reason to change a rule.

²⁶ *USF/ICC Transformation Order*, ¶ 942; see also NCTA Comments at 14-15.

²⁷ Comments of AT&T at 36-40.

