Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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

T-MOBILE USA, INC. REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION OR CLARIFICATION

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

On December 29, 2011, T-Mobile USA, Inc. ("T-Mobile") filed a Petition for Reconsideration or Clarification (the "T-Mobile PFR") asking the Commission to clarify the level of high-cost universal service fund ("USF") support T-Mobile is to receive during the phase-down of high-cost support for competitive eligible telecommunications carriers ("CETCs") established in the *Transformation Order*. The mere handful of oppositions to the T-Mobile PFR fail to address the conflict between the *Transformation Order* and the rule promulgated by that order regarding the phase-down of high-cost USF support for certain CETCs. The oppositions also do not address the public interest findings on which T-Mobile's 2011 state commission eligible telecommunications carrier ("ETC") designation orders are based. Because none of the oppositions has even attempted to address the failure of the rule to implement the intent of the order or the significance of the state commission determinations, the Commission should grant the T-Mobile PFR.

The *Transformation Order* concluded that the legacy high-cost support received by a CETC for 2011 should be used to set its baseline level of support for the phase-down transition, starting in 2012. The monthly baseline amount of support was to be based on the same level of support that the CETC received for 2011, "had we retained the identical support rule going forward." Rule 54.307(e)(1) failed to implement this clear policy decision for two categories of CETCs with pending ETC designation applications prior to adoption of the *Transformation Order*: (1) those that were designated and received high-cost USF support for part of 2011 and (2) those pending applications that are designated too late to receive disbursements for 2011. T-Mobile requested that, for both categories, the rule be reconsidered or clarified to carry out the intent of the *Transformation Order*, which was to ensure a reasonable approximation of a monthly baseline amount of support "that [a CETC] would currently expect to receive."

Four T-Mobile ETC applications were granted in 2011 and a fifth, for Georgia, was granted earlier this month, retroactively effective as of November 17, 2011. The opposition filings raise extraneous issues regarding the timing of T-Mobile's ETC applications and delays in processing them. The oppositions attempt to advance the deadline for qualifying for phase-down treatment by an entire year in order to reduce support selectively for any CETC designated after 2010. Opponents' complaints that the grant of the T-Mobile PFR will reduce their support are untimely challenges to the *Interim Cap Order*, which expressly contemplated the continuing grant of ETC applications and corresponding reductions in existing CETCs' support. Their complaints also constitute collateral attacks on the state commission orders granting T-Mobile's ETC applications in the face of similar arguments regarding the impact on other CETCs' support. Opponents' arguments that T-Mobile does not need support as much as they do are self-serving and irrelevant. In fact, T-Mobile cannot be expected to meet the service and build-out commitments upon which its state designation orders rest if its high-cost support is slashed so precipitously, relative to the support received by other CETCs designated prior to 2011.

If any of T-Mobile's three remaining high-cost ETC applications is granted with an effective date in 2011, it also will receive support "for 2011" and should qualify for the same phase-down baseline treatment that T-Mobile seeks for its five ETC designations effective as of 2011. Even if one or more of the pending applications do not qualify for legacy support for 2011, similar policy reasons justify parallel phase-down treatment. If any of the pending applications is granted, T-Mobile will have made the same public interest showing in that application as any CETC receiving support for 2011, and the service commitments upon which the designation order and supporting public interest determinations are based similarly require phase-down high-cost funding.

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T-MOBILE USA, INC. REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION OR CLARIFICATION

T-Mobile replies to the oppositions to the T-Mobile PFR to urge the Commission to ensure that the stated intent of the *Transformation Order* regarding the phase-down of high-cost USF support is carried out.[1] The oppositions fail to address the core issue – the conflict between the high-cost support phase-down "baseline" policy decision in the *Transformation Order* and Rule 54.307(e)(1),[2] as applied to certain CETCs, and thus fail entirely to respond to the merits of the T-Mobile PFR.[3] Because none of the oppositions has even attempted to address the

[1] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-161 (Nov. 18, 2011) ("*Transformation Order*"), 76 Fed. Reg. 73830 (Nov. 29, 2011).

[2] *See* 47 C.F.R. § 54.307(e)(1).

[3] Oppositions were filed by Coral Wireless d/b/a Mobi PCS ("Mobi"), C Spire Wireless *et al.* ("Joint Parties"), FTC Communications, LLC and Horry Telephone Cooperative, Inc. ("FTC")

Commission's intent, as expressed in the *Transformation Order,* regarding the phase-down of CETC support, the Commission should grant the T-Mobile PFR.

I. INTRODUCTION

The *Transformation Order* concluded that the legacy high-cost support received by a CETC for 2011 should be used to set its baseline level of support for the five-year phase-down transition. This approach was designed to provide a reasonable approximation of the monthly baseline amount "that [CETCs] would currently expect to receive, absent reform, and a natural starting point for the phase-down of support" had the Commission retained the identical support rule going forward.[4] Legacy support was intended to phase down "gradual[ly]" from the level of existing support "as of year end 2011."[5] Accordingly, the monthly baseline amount of high-cost USF support provided from January 1, 2012 to June 30, 2012 was to be based on the same level of existing support that the CETC received in 2011, "had we retained the identical support rule going forward."[6]

As explained in the T-Mobile PFR, Section 54.307(e)(1) of the Commission's rules, promulgated by the *Transformation Order*, failed to implement this clear policy decision for two categories of CETCs with applications for ETC designation pending prior to adoption of the *Transformation Order*: (1) those that were designated and received high-cost USF support for part of 2011; and (2) those that are designated too late – either in 2011 or a subsequent year – to

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and NASUCA and the New Jersey Division of Rate Counsel ("NASUCA") on February 9, 2012. The Joint Parties filed an erratum to their Opposition on February 10, 2012. The oppositions will be cited in an abbreviated manner throughout.

[4] *Transformation Order* at ¶¶ 515, 516, 519.

[5] *Id.* at ¶ 29.

[6] *Id.* at ¶ 516.

receive any support for 2011. With regard to the first category, because the rule calculates the monthly baseline support amount by dividing a CETC's support for 2011 by 12 (a number that does not appear in the relevant discussion in the *Transformation Order*), a CETC designated during 2011 and receiving support for only a portion of the year will receive much less support in the first half of 2012 than the monthly amount it received in 2011. That CETC will not receive a "reasonable approximation of the amount that [it] would currently expect to receive, absent reform" in a typical month under the identical support rule, as intended under the *Transformation Order*.[7]

T-Mobile requested that the rule be reconsidered or clarified to direct that the monthly baseline level of support for a CETC in the first category be calculated by dividing the total amount of support received for 2011 by the number of months in 2011 for which the CETC received support rather than by 12.[8] Similarly, as to the second category of CETCs, T-Mobile asked that the Commission key monthly support to the average monthly high-cost support that would have been received in 2011, absent reform, if the carriers in the second category had been designated ETCs and received support for 2011 under the prior rules.

T-Mobile was granted ETC status in four states in 2011[9] and in a fifth state, Georgia, on February 10, 2012, which was retroactively effective as of November 17, 2011.[10] Because total 2011 support for purposes of the phase-down baseline calculation is the total support disbursed

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[7] *Id.* at ¶¶ 515, 516.

[8] *See* 47 C.F.R. § 54.307(e)(1).

[9] *See* T-Mobile PFR at 5-6 n.15.

[10] Transcript of Administrative Session at 7-12, *Application of T-Mobile South LLC for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(2) of the Communications Act of 1934*, Docket No. 32967 (Ga. Pub. Serv. Comm'n, Feb. 10, 2012) ("*GPSC ETC Approval*").

to a CETC "*for* 2011," not just the support payments received *in* 2011,[11] T-Mobile will be receiving legacy high-cost support for 2011 in Georgia as well. Thus, the support ultimately disbursed to T-Mobile with regard to its Georgia ETC designation for the period November 17, 2011 to the end of 2011 is the amount to be used to derive its monthly baseline amount.[12] T-Mobile has ETC designation applications pending in Arizona, Mississippi and Oregon, all of which were filed before (and in the case of Mississippi and Oregon, many months before) the adoption of the *Transformation Order*.[13] All of T-Mobile's ETC designations were supported by state commission findings that the public interest would be served by providing high-cost support to T-Mobile to enable it to expand its deployment of new services in rural high-cost areas, and its pending ETC applications are supported by similar public interest showings.[14] T-Mobile cannot be expected to meet the service commitments supporting those designation orders and pending applications if it does not receive the high-cost support it would have received for 2011 "absent reform."[15]

The four oppositions do not address the CETC phase-down baseline policy decision in the *Transformation Order* or the conflict between that decision and the wording of Rule 54.307(e)(1) and thus never directly address the merits of T-Mobile's petition as to ETCs receiving support for 2011.[16] For example, Coral Wireless d/b/a Mobi PCS ("Mobi") wrongly

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[11] *Transformation Order* at ¶ 515 n.854 (total 2011 support includes all support disbursed "for 2011") (emphasis added).

[12] *Id.* at ¶ 519.

[13] *See* T-Mobile PFR at 8-9 n.26.

[14] *Id.* at 8-12.

[15] *Transformation Order* at ¶ 515.

[16] FTC limits its opposition to the petition to ETCs that received no support for 2011.

asserts that T-Mobile seeks an increase in the support provided under the *Order*,[17] without ever analyzing what the *Transformation Order* provides. C Spire Wireless *et al.* ("Joint Parties") assert that the *Transformation Order* made a policy decision to set the 2011 baseline support amount based on total calendar year 2011 support, and that T-Mobile was on notice that total 2011 support would be used as the baseline,[18] but fail to address the real issue – how total 2011 support was intended to be used in calculating the monthly baseline amount under the *Transformation Order*.[19] Mobi also does not address the *Transformation Order's* discussion of the phase-down baseline calculation issue. Instead, it focuses on other portions of the *Transformation Order* addressing how support is to be distributed under the Mobility Fund.[20] Thus, none of the oppositions address the merits of T-Mobile's position that the rule is fundamentally at odds with the order that promulgated it and should be reconsidered.

II. THE COMMISSION SHOULD REJECT OPPONENTS' ARGUMENTS REGARDING THE TIMING OF T-MOBILE'S ETC APPLICATIONS

Contrary to the opponents' assertions, T-Mobile does not object to the phase-down, nor does it claim a vested interest in a certain level of support. It simply requests the same phase-down from its monthly support for 2011 that the *Transformation Order* provides to all other CETCs – an even, 20 percent reduction per year, starting July 1, 2012. Despite the language of the *Transformation Order*, Rule 54.307(e)(1) unfairly causes the phase-down for ETCs

[17] Mobi Opp. at 4.

[18] Joint Parties Opp. at 4-5.

[19] *Transformation Order* at ¶ 519.

[20] Mobi Opp. at 5. NASUCA argues only that T-Mobile's request should be presented in a waiver petition, rather than a petition for reconsideration, but does not address the inconsistency between the *Transformation Order* and the rule. NASUCA Opp. at 9. That inconsistency invalidates the rule because it is not adequately explained. *See e.g.*, *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 129 S. Ct. 1800, 1811 (2009).

designated in 2011 to be much steeper than for entities designated prior to 2011. The *Transformation Order*, however, draws no distinction between ETCs designated before and after December 31, 2010. Rather, legacy support was intended to phase down "gradual[ly]" from the level of existing support "*as of year end 2011*."[21] T-Mobile has received or will shortly receive support for some portion of 2011[22] – *i.e.*, "as of year end 2011" – for five of its high-cost ETC designations (the four designations granted in 2011 plus Georgia). The Commission should, therefore, reject opponents' attempt to advance the deadline an entire year in order to reduce support selectively for any CETC designated after December 31, 2010.

Moreover, complaints about the timing of T-Mobile's ETC applications are a red herring. In fact, in some cases, opponents in the state ETC designation proceedings spent substantial resources in challenging T-Mobile's applications. In T-Mobile's ETC designation proceeding in Idaho, for example, the Public Utilities Commission specifically admonished the tactics of an opposing party in its Order denying a requested delay and granting T-Mobile's Application for Designation as an ETC:

> We affirm our decision made at the July 11, 2011 decision meeting to deny the Motion [to Defer Deliberation]. We find Allied's Motion to be untimely, inappropriate and beyond the scope of our Procedural Rules. We find that Allied did not timely avail itself of the opportunity to conduct discovery in this case. As set out above, there was ample opportunity to conduct discovery but Allied did not do so until July 1 nearly 28 weeks after T-Mobile filed its Application and about 14 weeks after the announcement of the merger with AT&T. Accordingly, we reject Allied's Motion to Defer.[23]

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[21] *Transformation Order* at ¶ 29 (emphasis added).

[22] *Id.* at ¶¶ 515 n.854.

[23] *Application of T-Mobile West Corp. for Designation as an Eligible Telecommunications Carrier*, Order No. 32319 at 10, Case No. TMW-T-10-01 (Idaho Pub. Util. Comm'n Aug. 9, 2011) ("*IPUC ETC Order*").

Given the circumstances causing the delays in the processing of T-Mobile's ETC applications, opponents should not now be permitted to argue that T-Mobile's designations were granted too late for it to receive the same phase-down support that they receive. Other factors, including state commission delay, also prevented earlier action on some of T-Mobile's ETC applications.[24] Also, other carriers have filed ETC applications within the past two years and, in some cases, requested retroactive designations.[25] Opponents' implicit position that 2011 was too late to be designated an ETC to qualify fully for phase-down support thus is not universally shared. Under the terms of the *Transformation Order*, any CETC receiving support "for 2011" qualifies for phase-down support.[26]

III. OPPONENTS' ARGUMENTS CONSTITUTE AN UNTIMELY CHALLENGE TO THE *INTERIM CAP ORDER* AND COLLATERAL ATTACKS AGAINST THE STATES' ETC DESIGNATION ORDERS

Opponents argue that other CETCs will receive less support under the *Interim Cap Order*[27] if T-Mobile's reading of the *Transformation Order* is upheld, depriving them of "the certainty of set amounts of support during the transition period"[28] and leading to various alleged

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[24] The Vice Chairman of the Georgia Public Service Commission acknowledged, regarding T-Mobile's ETC application, that that "we dragged our feet a little bit on this case." *GPSC ETC Approval* at 9.

[25] *See, e.g., New Cingular Wireless PCS, LLC Designated Eligible Carrier Application*, Order, Case No. PU-11-86 (N. D. Pub. Serv. Comm'n July 13, 2011) (granting ETC application filed March 23, 2011); *Application of Georgia RSA #8 Partnership for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, Order Granting ETC Status, Docket No. 32325 (Ga. Pub. Serv. Comm'n filed Oct. 14, 2010) (granting ETC application filed on July 14, 2010 retroactively to April 26, 2010).

[26] *Transformation Order* at ¶ 515 n.854.

[27] *High-Cost Universal Service Support*, 23 FCC Rcd 8834 (2008) ("*Interim Cap Order*"), *aff'd Rural Cellular Ass'n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009).

[28] Mobi Opp. at 10.

harms.[29] These arguments are an untimely challenge to the *Interim Cap Order*. The opposing parties have been on notice since 2008 that support could be reduced in a state in which another CETC is designated. As the Commission observed in the *Transformation Order*, "All carriers in states where the interim cap has an effect receive less than they are 'eligible' for."[30] Like SouthernLINC, in its unsuccessful challenge to the *Corr Wireless Order*,[31] opponents appear to embrace "the theory that [CETCs] like [them] are entitled to support," but their "complaint . . . is directed against the *Interim Cap Order*. . . . The time for revisiting that Order has long since passed. . . ."[32]

Opponents' reduction in support resulting from the *Interim Cap Order* has no bearing on a proper interpretation of the *Transformation Order*. Because the *Transformation Order* does not exempt the support received by previously-designated CETCs from the effects of the *Interim Cap Order*, they should have no expectation that their support would not be reduced in the case of CETCs designated in or after 2011. Moreover, the Commission was clear in the *Interim Cap Order* that additional ETC designations could be sought and granted, notwithstanding the impact on existing CETC support.[33]

Opponents' arguments in effect also are collateral attacks on the state commissions' ETC designation orders. The commissions that granted T-Mobile's ETC applications were well aware that those decisions would, by operation of the *Interim Cap Order*, result in pro rata reduced

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[29] *See also* Joint Parties Opp. at 3, 7; Mobi Opp. at 7, 9-10; FTC Opp. at 3-4.

[30] *Transformation Order,* App. F at ¶ 14.

[31] *High-Cost Universal Service Support*, 25 FCC Rcd 12854 (2010) ("*Corr Wireless Order*").

[32] *Transformation Order,* App. F at ¶ 24.

[33] *Interim Cap Order,* 23 FCC Rcd at 8850 ¶ 39.

support for other CETCs designated in the same states.[34] T-Mobile's competitors unsuccessfully raised that very issue before some of the state commissions considering T-Mobile's ETC applications.[35] Nevertheless, the state commissions determined that the grant of T-Mobile's applications would benefit consumers and the public interest.[36] Accordingly, opponents' claim that proper funding for T-Mobile's ETC designations would be wasteful or duplicative or otherwise not in the public interest must be rejected as a collateral attack on the designation orders.[37]

The opponents now raise the same objections to the application of the phase-down baseline decision in the *Transformation Order* to T-Mobile's ETC designations. This Commission, however, should not undermine the decisions of state commissions to designate T-Mobile as an ETC by denying the T-Mobile PFR. As the Commission noted in the *Transformation Order*, "[w]e do not disturb the existing role of states in designating ETCs and in

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[34] *See, e.g., Application of T-Mobile West Corp. For Designation as an Eligible Telecommunications Carrier in the State of Hawaii*, Decision and Order at 10-11, 37-38, Docket No. 2010-0119 (Haw. Pub. Util. Comm'n Mar. 14, 2011) ("*HPUC ETC Order*").

[35] *See, e.g.,* Direct Testimony of Jeffrey Galloway on Behalf of Georgia RSA #8 Partnership at 15, *Application of T-Mobile South LLC for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, Docket No. 32967 (Oct. 7, 2011) ("Granting T-Mobile's application will reduce the federal universal service funds ("USF") available to current, and future competitive ETCs in Georgia."); Application of Southern Communications Services, Inc. d/b/a/ SouthernLINC Wireless for Leave to Intervene, *Application of T-Mobile South LLC for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, Docket No. 32967 (Dec. 16, 2011) (arguing that potential loss of CETC support if T-Mobile's ETC application is granted provides standing to intervene).

[36] *See, e.g., HPUC ETC Order* at 37-38.

[37] *See* Mobi Opp. at 5-8.

monitoring that ETCs within their jurisdiction are using universal service support for its intended purpose."[38]

Mobi also is wrong that the state commissions, and not this Commission, should address any concerns that T-Mobile might not be able to meet its service or build-out commitments in the absence of adequate support.[39] With full knowledge of the CETC interim cap and the likely impending phase-down, the state commissions found T-Mobile eligible for high-cost funding and imposed obligations in return for such designations. This Commission's role is to determine the correct amount of phase-down funding to be distributed to the designated ETCs, applying the *Transformation Order*. Just as this Commission respects the role of the states in designating ETCs, it should not force the states to release ETCs from their obligations and service commitments by denying T-Mobile's request to apply properly the phase-down baseline policy decision in the *Transformation Order*.

As explained in the T-Mobile PFR, its service commitments are inextricably intertwined with and dependent upon the anticipated high-cost support "'that [it] would currently expect to receive, absent reform.'"[40] All of T-Mobile's ETC designations were supported by state commission findings that the public interest would be served by providing high-cost support to T-Mobile to enable it to expand its deployment of new services in rural high-cost areas.[41] Without at least a level of phase-down support declining at the same rate as other CETCs' support, T-Mobile could not reasonably be expected to meet the same service and build-out

[38] *Transformation Order* at ¶ 31.

[39] *See* Mobi Opp. at 7-8.

[40] T-Mobile PFR at 12 (quoting *Transformation Order* at ¶ 515).

[41] *Id.* at 8-12.

commitments, including new cell towers and other facilities, it made when it filed the applications that have been granted. As explained in the T-Mobile PFR, Rule 54.307(e)(1) causes its high-cost support to phase down more precipitously than most other CETCs' support. For example, if the T-Mobile PFR is not granted, its monthly baseline support for the beginning of the high-cost phase-down in Idaho will be less than one-half of its average monthly support for 2011 in that state.[42] The findings in the *Transformation Order* justifying the gradual phase-down of CETC support cannot sustain the slashing of support for CETCs designated in 2011.

Opponents' argument that all other CETCs will receive reduced funding prospectively if the T-Mobile PFR is granted also is not entirely accurate. For example, in Idaho, where T-Mobile was designated an ETC in August 2011, other CETCs that were designated prior to 2011 experienced a decline in support for the final months of 2011 as a result of the operation of the *Interim Cap Order*. If the T-Mobile PFR is granted, they will not be subject to further reductions in their monthly support below the average level of monthly support they received for the period in 2011 reflecting T-Mobile's entry (August through December).[43] In fact, their support will actually *increase* from the average level of support they received for the final months of 2011 reflecting T-Mobile's entry if the T-Mobile PFR is granted and will increase

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[42] *Compare* Universal Service Administrative Company, High-Cost Disbursement Data for Idaho from January 2003 to December 2011 ("2011 Idaho Disbursements"), *available at* http://www.usac.org/hc/tools/disbursements/default.aspx (in the "Year" field, select "2011," and in the "State" field, select "ID;" select "View in Excel," then follow "Find" hyperlink) (last visited Feb. 21, 2012), *with* Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2011* (Feb. 1, 2012), Appendix HC01, "Frozen High-Cost Monthly Support" ("2012 Frozen Support Levels"), *available at* http://www.usac.org/about/governance/fcc-filings/2012/Q2/HC01-%20High%20Cost%20Support%20Projected%20by%20State%20by%20Study%20Area%20-%202Q2012.xls.

[43] *Compare* 2011 Idaho Disbursements *with* 2012 Frozen Support Levels.

even more if it is denied.[44] Opponents have presented no justification for reducing T-Mobile's monthly support so that other CETCs can enjoy an increase in monthly support from the levels of support they received in the latter part of 2011.

IV. OPPONENTS' ASSERTIONS REGARDING T-MOBILE'S NEED FOR SUPPORT ARE INACCURATE AND IRRELEVANT

Opponents' argument that T-Mobile does not need support because it probably has not made the initial investments in its newly designated service areas attempts to impose new requirements on recently designated CETCs.[45] T-Mobile and all other CETCs are required to provide five-year plans and annual certifications as to their use of USF support.[46] The *Transformation Order* maintains these requirements for newly designated CETCs, whether regarding their investments in their designated areas or their use of support. Moreover, Mobi's argument that T-Mobile does not need support because it was providing service prior to its ETC designations in some areas is dispositive of nothing.[47] Wireless carriers often deploy facilities in high-cost areas prior to receiving ETC designation.[48]

Contrary to Mobi's speculation that newly designated CETCs are likely to focus their deployment efforts on the lowest cost portions of their designated service areas,[49] the four state

[44] This conclusion is derived from calculating the change in T-Mobile support if the T-Mobile PFR is granted, based on 2011 Idaho Disbursements and 2012 Frozen Support Levels and then calculating the impact on all other CETCs in Idaho going forward if it is granted.

[45] Joint Parties' Opp. at 7; Mobi Opp. at 3-5.

[46] *See Federal-State Joint Board on Universal Service*, 20 FCC Rcd 6371, 6381-82, 6400-02 ¶¶ 23, 68-72 (2005).

[47] Mobi Opp. at 3.

[48] *See Interim Cap Order*, 23 FCC Rcd at 8841 ¶ 13.

[49] Mobi Opp. at 5-6.

commissions granting T-Mobile's ETC applications in 2011 all found that the support would expand its coverage in high-cost areas, resulting in increased services.[50] T-Mobile made similar commitments in the applications for those designations and in its pending ETC applications.[51] More recently, the Public Utilities Commission of Hawaii ("Hawaii PUC") reviewed T-Mobile's proposed use of high-cost support in the company's annual certification filed in June 2011. Again, as it did in its Order granting T-Mobile's designation as an ETC, the Hawaii PUC reviewed T-Mobile's Service Improvement Plan ("SIP") and determined that it demonstrated satisfactory use of high-cost support. Specifically, the Hawaii Commission found that "T-Mobile has satisfactorily complied with the annual certification requirements. . . . T-Mobile provided the required information as mandated by the commission. . . . Specifically, among other things, T-Mobile submitted its SIP and provided the necessary certifications as required."[52] The state commissions are the proper fora to determine the need for support in their high-cost areas and whether ETCs have made proper use of their high-cost support.

V. THE OPPOSITIONS FAIL TO EXPLAIN WHY THE SAME PHASE-DOWN POLICY SHOULD NOT BE APPLIED TO T-MOBILE'S PENDING ETC APPLICATIONS IN THE EVENT THEY ARE GRANTED

The oppositions assert that phase-down support was intended only for CETCs receiving legacy support in 2011 and that extending it to ETCs granted after 2011 would result in the same harms as the relief sought for ETCs designated in 2011 but to a greater degree.[53] T-Mobile

[50] *See* T-Mobile PFR at 10-12.

[51] *Id.*

[52] *Application of T-Mobile West Corporation For Annual Certification as an Eligible Telecommunications Carrier ("ETC")*, Decision and Order at 10-11, Docket No. 2011-0150 (Haw. Pub. Util. Comm'n September 12, 2011).

[53] FTC Opp. at 2-4; Joint Parties Opp. at 8.

disagrees. First, because total 2011 support for phase-down purposes includes all support received "for 2011," retroactive grant of any of these applications, effective as of dates in 2011, should result in high-cost support for 2011 for T-Mobile's operations in those states. Such support is eligible for phase-down baseline treatment under the *Transformation Order*. The rationale and methodology spelled out in the T-Mobile PFR and in this Reply would then be fully applicable to the calculation of the monthly baseline amount.

Second, even if one or more of the pending T-Mobile high-cost ETC applications is not retroactively granted as of a date in 2011, or for some other reason cannot result in legacy support "for 2011," similar policy reasons justify phase-down treatment regardless. Any carrier with an ETC application pending as of the adoption of the *Transformation Order* that is ultimately designated as an ETC has the same demonstrated need for high-cost support and will have been found to have made the same public interest showing as any CETC receiving support in 2011. Therefore, any delay in granting T-Mobile's applications pending as of the date of the *Transformation Order* should not preclude T-Mobile's requested relief. If the relief sought in the T-Mobile PFR is not extended to the pending ETC applications, T-Mobile could not reasonably be expected to meet the same service commitments it made when it filed the applications prior to adoption of the *Transformation Order*.

Finally, the Joint Parties profess to lack an understanding of how the baseline level of support to CETCs designated after 2011 would be calculated.[54] As explained in the T-Mobile PFR, that calculation would be based on the per-line support that it would have received in 2011 under the CETC cap if it had been a CETC during all of 2011, just like all other CETC support in 2011. Its actual support would be calculated by applying the phase-down formula to the baseline

[54] Joint Parties Opp. at 8.

amount. If a pending application ultimately is not granted, no such calculation ever becomes necessary.

VI. CONCLUSION

Opponents have failed to address the contradictions between the *Transformation Order* and Rule 54.307(e)(1). The rule should be modified or clarified to allow the "monthly baseline support amount" calculation to reflect the more accurate measure of high-cost support for 2011 intended in the *Transformation Order*.

Respectfully submitted,

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February 21, 2012

CERTIFICATE OF SERVICE

I, Theresa Rollins, hereby certify under penalty of perjury that the foregoing T-Mobile USA, Inc. Reply to Oppositions to Petition for Reconsideration or Clarification was served this 21st day of February, 2012 by depositing a true copy thereof with the United States Postal Service, first class postage pre-paid, addressed to:

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