

**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 OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
TO OPPOSITIONS TO PETITIONS
FOR RECONSIDERATION AND/OR CLARIFICATION**

The National Telecommunications Cooperative Association (“NTCA”)¹ hereby replies to certain Oppositions filed in response to Petitions for Reconsideration and/or Clarification (“PFRs”) of the *Order* issued by the Federal Communications Commission (the “Commission”)

¹ NTCA is a national trade association representing nearly 600 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are rural telephone companies as that term is defined in the Communications Act of 1934, as amended (the “Act”). The members are full service telecommunications companies, with most providing broadband Internet access, video, long distance and/or wireless service to consumers and businesses in their rural communities.

in the above-captioned proceeding.² Specifically, NTCA submits that the positions of certain industry segments with respect to the interplay of “budgetary” objectives and performance mandates implicate patent regulatory gamesmanship. These parties look at once to saddle smaller rural local exchange carriers (“RLECs”) with burdensome reporting and service delivery obligations while also promoting reductions to universal service fund (“USF”) support that would render it increasingly difficult for smaller carriers to meet those obligations and otherwise deliver on the promise of universal service for rural consumers. NTCA also replies herein to arguments in favor of accelerating certain intercarrier compensation (“ICC”) rate reductions notwithstanding: (a) the lack of any Recovery Mechanism for such reductions; (b) the clear intent of the *Order* to avoid reducing such charges; and/or (c) the fact that there is no technically feasible means to implement the rate reductions contemplated.

I. THE COMMISSION SHOULD REJECT ARGUMENTS TO SIMULTANEOUSLY REDUCE RLEC SUPPORT AND INCREASE RLEC OBLIGATIONS.

The PFR filed by the National Exchange Carrier Association (“NECA”), the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), and the Western Telecommunications Alliance (“WTA”) highlighted a significant inconsistency within the *Order*. Specifically, the *Order* simultaneously increases the reporting and service delivery burdens on RLEC USF recipients, while reducing the amount of USF support available to meet those obligations and otherwise promote the availability and

² *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 – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (the “*Order*”).

affordability of broadband.³ NTCA agrees with NECA, OPASTCO, and WTA that the “budget” for USF as adopted in the *Order* is untethered to any determination of what might in fact be “sufficient” to achieve the objectives of universal service, particularly as universal service migrates from supporting basic telephone service to enabling further investment in and operation of broadband-capable networks.⁴

The assertions by a handful of parties provide no factual basis to contradict this fundamental concern. For example, Verizon misses the mark when it argues that “[t]hese reforms were relatively minor and . . . left support levels for rate-of-return ILECs effectively unchanged.”⁵ To the contrary, the *Order* itself indicates that most RLECs will lose USF support in the first year of reform (with 3 in 10 losing at least 10% of USF support),⁶ and adopts a “budget” that presumes that hundreds of millions of dollars of ICC rate reductions (that accrue largely to the benefit of carriers like Verizon) can be wedged into the “budget” over six years as “backfill” for extracted reductions in USF.⁷ Similarly, the National Cable & Telecommunications Association (“NCTA”) argues that budget-related arguments by NECA, OPASTCO, and WTA “illustrate[] an utter lack of seriousness about the need for meaningful reform.”⁸ To the contrary, it is NCTA that demonstrates “an utter lack of seriousness” with

³ NECA/OPASTCO/WTA PFR at 2-6. For purposes of clarification, all references to PFRs and Oppositions herein are to those filed on December 29, 2011, and February 9, 2012, respectively, in the above-captioned proceedings.

⁴ *See id.* at 6-9.

⁵ Verizon Opposition at 4.

⁶ *Order* at ¶ 290.

⁷ *See id.* at ¶ 26 (identifying total RLEC USF support as \$2 billion annually), ¶ 27 (indicating that RLEC high-cost support is expected to remain at \$2 billion annually through 2017); and ¶ 851 (setting forth the ICC recovery mechanism that will be part and parcel of high-cost support).

⁸ NCTA Comments at 6.

respect to data-driven rulemaking by asserting time and again that current levels of USF support (or less) represent the right “budget” number without providing any empirical analysis or other evidence in support of that claim. Inasmuch as the National Broadband Plan determined that the Broadband Availability Gap is a \$24 billion problem,⁹ the Commission should reject patently baseless claims such as those set forth by NCTA.

NCTA’s argument against recalibrating the reporting and performance mandates in the *Order* to make them commensurate with available funding levels likewise rests upon a very shaky foundation. Specifically, NCTA asserts that NECA, OPASTCO, and WTA seek to have the Commission reconsider “virtually all of the decisions [] made to improve accountability and transition to a broadband-oriented regime.”¹⁰ At best, this assertion reflects a casual familiarity with the pleading; at worst, it misstates the relief sought. What NECA, OPASTCO, and WTA have requested is a more appropriate *balance* between available funding and the mandates and requirements that would attach thereto. As an initial matter, there can be no credible claim that RLECs have been unaccountable with USF support. To the contrary, frequent and repeated audits have revealed virtually no problems whatsoever in tracing RLEC use of USF to network investment and operation and service delivery.¹¹ Moreover, the PFR filed by NECA,

⁹ See Rob Curtis, Deployment Director, and Steve Rosenberg - Manager of Infrastructure, Omnibus Broadband Initiative, “Announcing “*The Broadband Availability Gap*,” Staff Analysis, posted April 20, 2010 (available at: <http://blog.broadband.gov/?entryId=382942>).

¹⁰ NCTA Comments at 8.

¹¹ For example, the Universal Service Administrative Company (“USAC”) announced in its 2009 Annual Report that final data for the first round of the Office of Inspector General audit program showed the actual “improper payment rate” for the High Cost Program, associated mostly with questions regarding record retention and rule interpretation disputes, was only 2.7 percent. USAC stated it anticipated final reports for the second and third rounds of the OIG audit program would show “similar results.” Universal Service Administrative Company, 2009 Annual Report at 2, available at: http://www.usac.org/_res/documents/about/pdf/usac-annual-report-2009.pdf.

OPASTCO, and WTA was hardly as broad as NCTA makes it appear. Rather than seeking liberty from “virtually all” measures of accountability, the PFR identified several targeted concerns: (a) reports already submitted by RLECs to state commissions have proven effective in ensuring accountability and should be used for that purpose in lieu of additional federal reporting requirements; (b) the requirement to submit audit reports by April 1 would impose significant burdens and should be subject to confidentiality protections as well as later filing dates; and (c) smaller carriers would have difficulty meeting certain network performance and monitoring requirements.¹²

NTCA and its rural carrier members recognize the value of, and are willing to adhere to, reasonable reporting requirements that ensure accountability with respect to use of USF resources by carriers of last resort. These carriers already live under – and live up to – many such measures. But, the specific measures identified in the NECA, OPASTCO, and WTA PFR represent unreasonable burdens and should be reconsidered as requested therein.

II. THE COMMISSION SHOULD GRANT THE PFRs SEEKING RECONSIDERATION OR CLARIFICATION OF DISCRETE ICC ISSUES RELATING TO THE ASSESSMENT OF ACCESS CHARGES ON VoIP CALLS AND WIRELESS TRAFFIC ROUTED THROUGH INTEREXCHANGE CARRIERS.

Frontier and Windstream have sought clarification and/or reconsideration regarding the treatment of intrastate toll calls that originate on wireline telephones and terminate to a VoIP

¹² NECA, OPASTCO, and WTA PFR at 23-25. Indeed, the last concern is one shared by smaller cable and telecom providers alike. *See Ex Parte* Letter from Ross J. Lieberman, Vice President of Government Affairs, American Cable Association, Michael R. Romano, Senior Vice President – Policy, NTCA, and Stuart Polikoff, Vice President – Regulatory Policy and Business Development, OPASTCO, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-151, WC Docket No. 07-52, dated June 8, 2011 (highlighting the concerns faced by smaller providers in complying with broadband-related network measurement and reporting requirements). Also, with respect to the confidentiality of reports, it is worth noting that this request for reconsideration was supported by AT&T. *See* AT&T Opposition at 22.

customer.¹³ NECA, OPASTCO, and WTA sought similar clarification in their PFR,¹⁴ and the request of Frontier and Windstream was supported by a number of other providers.¹⁵ Verizon, however, objects to such clarification, arguing that the *Order* must be read to require that such calls be rated at interstate access levels.¹⁶

Putting VoIP on a pedestal in the manner advocated by Verizon with respect to originating access would be flatly contrary to the Commission's unmistakable insistence that it was "limiting reform to terminating access charges at this time" to minimize consumer impacts and burdens on the USF in the form of access replacement.¹⁷ Indeed, as to RLECs, the Commission expressly declined to reduce or even cap originating intrastate access charges "to control the size of the [Connect America Fund] and minimize burdens on consumers."¹⁸ Moreover, it would hardly be a "measured transition" toward the Commission's desired "end game" if a select class of traffic (in this case, PSTN-to-VoIP intrastate toll calls) were subject to originating access rate reductions without any corresponding recovery mechanism for the resulting revenue shortfalls.¹⁹ Just as the case in which the Commission delayed a reduction in rates applicable to the exchange of intraMTA traffic between local exchange carriers and CMRS providers, any rate reductions related to originating access assessable on toll calls to VoIP

¹³ Frontier and Windstream PFR at 21-29.

¹⁴ NECA, OPASTCO, and WTA at 34-35.

¹⁵ *See, e.g.*, Comments of Cbeyond, Earthlink, Integra, and tw telecom at 3-4.

¹⁶ Verizon Opposition at 10.

¹⁷ *Order* at ¶ 739.

¹⁸ *Id.* at ¶ 805.

¹⁹ *See id.* at ¶ 818.

providers should not take effect unless and until a corresponding recovery mechanism is available.²⁰

Similarly, the Commission should reject oppositions to reconsideration and/or clarification with respect to the charges assessable on interexchange carriers (“IXCs”) that happen to route intraMTA traffic across the access services and facilities they procure from RLECs. In the *Order*, the Commission indicated that intraMTA traffic exchanged between an RLEC and CMRS provider would be subject to bill-and-keep on a much more accelerated basis than all other categories of traffic.²¹ The PFR filed by NECA, OPASTCO, and WTA highlighted the substantial concerns associated with implementing this requirement.²² NTCA has explained in even greater detail the operational, financial, and call rating and routing issues that will arise for local exchange carriers, CMRS providers, IXCs, and consumers if this rule is implemented and applied to LEC-CMRS intraMTA traffic that is routed through an IXC.²³ NTCA will not repeat those arguments here, but notes that no party has made a meaningful attempt to address or rebut these concerns. Instead, parties such as Verizon, CTIA, and T-Mobile posit that the rule represents good policy (in their view) or assert without foundation that “factors” can solve every concern about identifying traffic, without responding in detail to the legitimate issues raised by

²⁰ See *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 – Mobility Fund*, WT Docket No. 10-208, Order on Reconsideration, FCC 11-189 (rel. Dec. 23, 2011), at ¶ 6 (finding it “more appropriate” to have bill-and-keep for intraMTA traffic begin “consistent with the start of the transitional intercarrier compensation recovery mechanism”).

²¹ *Order* at ¶ 994.

²² NECA, OPASTCO, and WTA PFR at 37.

²³ *Ex Parte* Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et al.*, dated Feb. 9, 2012 (“NTCA *Ex Parte*”).

NTCA and in the PFR filed by NECA, OPASTCO, and WTA.²⁴ As NTCA has explained in its most recent *ex parte*, even if it does not support the Commission’s migration to bill-and-keep generally or specifically with respect to intraMTA traffic, nothing in the request filed by NECA, OPASTCO, and WTA would undermine the ability of CMRS providers to enjoy free routing of their intraMTA calls. Rather, the request filed by NECA, OPASTCO, and WTA would simply require that CMRS providers to avail themselves of local interconnection (direct or indirect) to do so, rather than sending and receiving intraMTA calls through IXCs who make use of access services and facilities.²⁵

III. CONCLUSION

For the foregoing reasons, NTCA recommends that the Commission adopt the clarifications and modifications described in the above-referenced petitions.

Respectfully submitted,

/s/ Michael R. Romano
Michael R. Romano
Senior Vice President – Policy
National Telecommunications Cooperative Association
4121 Wilson Boulevard, 10th Floor
Arlington, Virginia 22203
(703) 351-2016 (Tel)
(703) 351-2036 (Fax)
mromano@ntca.org

February 21, 2012

²⁴ See, e.g., Verizon Opposition at 5; CTIA Opposition at 5-8; T-Mobile Opposition at 3.

²⁵ See NTCA *Ex Parte* at 2 (“Thus, even if NTCA and other representatives do not agree generally with the ICC regime adopted in the Order, we highlighted that there are several workable routes by which a CMRS provider might avail itself of that regime with respect to intraMTA traffic. But when the CMRS provider affirmatively chooses *not* to avail itself of either direct or indirect local interconnection and instead contracts with (and presumably pays) an IXC to terminate the call to a LEC, the CMRS provider has literally and unilaterally elected a different path for call delivery, and the Commission should confirm that the IXC handling that traffic is then required to pay the terminating LEC pursuant to tariff for the LEC’s access facilities it orders and uses.”)