

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Connect America Fund)	WC Docket No. 10-90
Vermont Public Service Board)	DA 12-81
Motion for Clarification)	
.....		
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
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (Pa. PUC) files these Reply Comments on the Vermont Public Service Board Motion for Clarification (VSB Motion) filed on December 28, 2011 and supporting Comments filed February 23, 2012.¹ The Reply Comments respond to the FCC notice of the VSB Motion published January 24, 2012, at DA 12-81. The VSB Notice set Comment and Reply Comment deadlines of February 23, 2012 and March 9, 2012, respectively. The VSB Motion is concerned that the FCC may have excluded Local Measured Service (LMS) rate regulatory structures based on language in the FCC's *Connect America Fund Order (CAF Order)* released on

¹ *In Re: Connect America Fund, Vermont Service Board Motion*, Docket No. 10-90, DA 12-81, Comments of the National Exchange Carrier Association, et. Al (February 23, 2012) and Comments of the Telecommunications Association of Vermont (February 23, 2012).

November 18, 2011, and published in the Federal Register at Vol. 76, No. 229 on Tuesday, November 29, 2011, at pp. 73830 through 73882 (the *CAF Order*).

The Pa. PUC appreciates an opportunity to file Reply Comments. As an initial matter, these Pa. PUC Reply Comments should not be construed as binding on the Pa. PUC in any matter before the Pa. PUC. Moreover, these Pa. PUC Reply Comments could change in response to later events, including Ex Parte filings or the review of other filed Reply Comments and legal or regulatory developments at the state or federal level.

The Pa. PUC Reply Comments reiterate the prior filings of the Pa. PUC on the FCC's legal authority to regulate intrastate telecommunications under federal law.² The VSB Motion also illustrates the policy issues arising from such centralized authority independent of the legality of the FCC's authority to regulate telecommunications.

If the FCC is ultimately upheld in its claim to have authority to regulate intrastate telecommunications, the Pa. PUC supports the VSB Motion and supporting Comments so long as it is a clarification limited to Vermont and other state commissions' LMS structures in place before the *CAF Order*. This is appropriate because those plans were crafted before the *CAF Order* and not with a view to the *CAF Order*. They have not arisen after the *CAF Order* in response to changed regulatory circumstances. A limited affirmation of pre-existing LMS plans prevents the replacement of unlimited local calling for a flat rate with measured service that ultimately increases local calling rates.

A limited clarification avoids two other results as well. The limitation avoids regulatory creativity in which a fixed-cost component of some later LMS is set below the local rate floor, and thereby justifies a denial of federal support, when in fact the LMS total rate exceeds the rate floor if the variable component and average usage are factored

²*In re: Connect America Fund*, Docket No. 10-90, Reply Comments of the Pa. PUC (May 23, 2011); Comments and Legal Analysis of the Pa. PUC (August 24, 2011) and Reply Comments of the Pa. PUC (September 26, 2011).

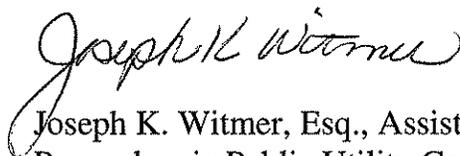
into the LMS. This regulatory end result may reduce federal support costs premised on not meeting a local rate floor even though the total rate meets the threshold.

Another scenario is provider creativity encouraged by limited federal staff responsible for reviewing hundreds of rate plans for thousands of local service providers. The problem would be aggravated if review for consistency with some predetermined federal rate ceiling has to be done in a very short time period. In that case, providers could set their fixed rate component above a local federal floor (and receive support) while also setting their variable rate component and average usage so the total LMS rate exceeds a pre-set federal rate ceiling. A total rate above the price ceiling would be supported even as the local rate floor meets a threshold warranting support from another fund. The end result is that two funds with separate purposes overlap and deliver double-support in a manner not intended by the *CAF Order*.

For these reasons, the Pa. PUC supports the VSB Motion so long as the FCC limits relief to pre-existing LMS pricing structures. This avoids problems likely to arise from a broader result and the ensuing regulatory gaming. The Pa. PUC thanks the FCC for providing this opportunity to file Reply Comments.

Respectfully Submitted On Behalf Of,

The Pennsylvania Public Utility Commission



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