

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	

**OPPOSITION OF CTIA–THE WIRELESS ASSOCIATION®
TO APPLICATIONS FOR REVIEW AND REQUESTS FOR STAY**

The Commission should reject applications for review¹ and the related requests to stay² the new, reasonable limits on reimbursable capital and operating costs that rate-of-return regulated (“RoR”) incumbent local exchange carriers (“ILECs”) may recover from the universal service fund (“USF”).³ These recent changes to USF subsidies for RoR ILECs are modest and overdue. The public interest will best be served if the Commission moves ahead with these

¹ Application for Review of Accipiter Communications Inc., WC Docket Nos. 10-90, 05-337 (filed May 25, 2012) (“Accipiter AFR”); Application for Review of Central Texas Telephone Cooperative, Inc., WC Docket Nos. 10-90, 05-337 (filed May 25, 2012) (“Central Texas AFR”); EATEL Application for Review of Action Taken Pursuant to Delegated Authority, WC Docket Nos. 10-90, 05-337 (filed May 25, 2012) (“EATEL AFR”); Application for Review of National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance, WC Docket Nos. 10-90, 05-337 (filed May 25, 2012) (“RLEC Associations AFR”) (collectively, the “AFRs”).

² Petition for Stay of East Ascension Telephone Company, LLC, WC Docket Nos. 10-90, 05-337 (filed May 25, 2012) (“EATEL Stay Petition”); Petition for Stay of National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance, WC Docket Nos. 10-90, 05-337 (filed May 25, 2012) (“RLEC Association Stay Petition”); Petition for Stay of Silver Star Telephone Company, Inc., WC Docket Nos. 10-90, 05-337 (filed May 25, 2012) (“Sliver Star Stay Petition”) (collectively, “Stay Petitions”).

³ *Connect America Fund, High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, DA 12-646 (rel. April 25, 2012) (“*Benchmarking Order*”).

relatively minor reforms ordered for RoR ILECs (pending a more thorough analysis of RoR universal service funding) as it proceeds with the much more extensive reforms ordered for wireless carriers and price cap ILECs. In any event, petitioners have not met the high standards for a stay of the rules. The Commission should deny the Stay Petitions and dismiss the AFRs.⁴

I. THE COMMISSION SHOULD DENY THE APPLICATIONS FOR REVIEW

The *USF/ICC Transformation Order*⁵ represents an unprecedented package of reforms – affecting all universal service support recipients – that seeks to refocus the universal service system on the broadband and mobile services that consumers are increasingly adopting, and to gradually transition beyond legacy services and networks that consumers are leaving behind. As part of that effort, the Commission adopted a number of reasonable reforms to “eliminate waste and inefficiency and improve incentives for rational investment and operation by rate-of-return

⁴ For the same reasons, CTIA also opposes any later-filed AFRs or stay requests on these same issues and requests that this opposition be registered in those proceedings as well. The time to file AFRs in this matter has not yet run, but CTIA is compelled to file its opposition now to meet the Commission’s deadline for opposing stay requests. 47 C.F.R. § 1.44(d); *see also* Public Notice, *Wireline Competition Bureau Reminds Parties of Deadlines for Filing and Commenting on Applications for Review of the HCLS Benchmarks Order*, WC Docket Nos. 10-90, 05-337 (May 31, 2012).

⁵ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663, 17742 (2011) (“*USF/ICC Transformation Order*”); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

carriers.”⁶ As discussed below, the Commission’s benchmark rule reasonably “responded to problematic incentives and inequitable distribution of support created by the prior rules.”⁷

The RoR ILECs’ complaints about these common-sense reforms are particularly troublesome given that, as a class, RoR ILECs face far fewer changes to their funding mechanisms than other classes of carriers in general, and wireless carriers in particular. Perhaps most significantly, the *USF/ICC Transformation Order* reduces wireless carriers’ dedicated support by more than half, despite the fact that today’s consumers have shown their marked preference for mobile services.⁸ By contrast, RoR ILECs retain the same aggregate amount of support and the same basic support system, with only minor changes (such as the capital and operating cost benchmarks), despite a continued consumer migration from incumbent wireline voice services. In this situation, it would be inequitable – and inconsistent with evolving consumer needs – to revisit the reforms adopted in the *USF/ICC Transformation Order* for just one group of carriers, as the AFRs propose. Universal service and intercarrier compensation simply cannot be reformed without shared sacrifices. In fact, if the Commission were to make changes to the new funding allocations now, those changes should increase mobility support, not redirect additional funding to wireline incumbent LECs – which granting the AFRs would do.

The regression-based benchmarks that the Commission has imposed on RoR ILECs’ reimbursable capital and operating costs are valid responses to significant problems: absent the benchmarks, RoR ILECs may require other carriers’ customers (through recovery from the universal service fund) to pay for excessive costs. And RoR ILECs would have natural

⁶ *Connect America Fund Order* at ¶195.

⁷ *Benchmarking Order* at ¶ 2.

⁸ *See, e.g.,* Comments of CTIA – The Wireless Association®, WC Docket Nos. 10-90 *et al.* (filed Aug. 24, 2011) at 15-16.

incentives to be inefficient, because reducing their costs will simply shift their support to a carrier that operates less efficiently.⁹ The Commission’s regression-based benchmarks reasonably identify RoR ILECs whose costs are outside the norm as compared to other RoR ILECs with similar cost characteristics and limit their ability to impose their excessive costs on other carriers’ customers through the USF.¹⁰ This is a small step, and a rational approach to a long-term problem with cost-based USF support for wireline carriers.

The Stay Petitions assert that there are various errors and inaccuracies in the Commission’s regression methodology and the data upon which it is based.¹¹ The Commission, however, has expended a great deal of effort formulating and improving its analysis, and absolute perfection in every application is simply not attainable (nor required) with more than 1,000 RoR ILECs and myriad required inputs to the Commission model.¹² This is why the Commission instead rationally chose to deal with potential anomalies through the waiver process. *USF/ICC Transformation Order* ¶¶ 539-44 (“[W]e permit any carrier negatively affected by the universal service reforms we take today to file a petition for waiver that clearly demonstrates that good cause exists for exempting the carrier from some or all of those reforms, and that waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice service.”).

Ultimately, the AFRs and the Stay Petitions are all based on a fundamentally flawed premise – that RoR ILECs are entitled to the full measure of support necessary to allow them to

⁹ *Benchmarking Order* at ¶ 2. See also *USF/ICC Transformation Order* at ¶ 211.

¹⁰ See *id.*

¹¹ RLEC Association Stay Petition at 3-6; EATEL Stay Petition at 2-5.

¹² See generally *Benchmarking Order*.

recover all of their expenditures, irrespective of the prudence of those expenditures or the impact on the overall USF. This simply is not the law, nor is it good policy. The Commission and the courts expressly rejected that argument when the Commission capped support to wireless ETCs. “The purpose of universal service is to benefit the customer, not the carrier.”¹³ The Commission plainly has authority to “impose cost controls to avoid excessive expenditures that will detract from universal service.”¹⁴ There is also no requirement that universal service support allow any specific company to recover all of its own costs. Indeed, for example, wireless carriers’ USF support has never been tied to these carriers’ own costs. Wireless support has historically been based on wireline costs (whether high or low) under the identical support rule, and the CETC cap that the Commission adopted and the D.C. Circuit affirmed was merely tied to a moment in time – March of 2008 – *not* the costs of any particular carrier or even a class of carriers.

That individual companies may now have to adjust their business models as a result of the *USF/ICC Transformation Order* is a necessary consequence of universal service reforms that benefit consumers – reforms that are overdue. Moreover, there is no statutory basis for the RoR ILECs’ position that they must be allowed to continue earning guaranteed returns that ultimately are funded by other carriers’ customers.

Finally, backtracking on the initial reforms that the Commission has ordered for RoR ILECs will only delay additional, much-needed, more significant reforms. As CTIA has argued,¹⁵ the Commission should proceed towards the ultimate elimination of RoR regulation,

¹³ *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095, 1103 (D.C. Cir. 2009), quoting *Alenco Comm’s v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000).

¹⁴ *Id.*

¹⁵ Comments of CTIA – The Wireless Association®, WC Docket Nos. 10-90 *et al.* (filed Aug. 24, 2011) at 19.

which does not reflect the increasingly competitive marketplace, beginning with forming a task force to recommend a glide path for elimination of RoR regulation. Pending such reform, the target rate of return should be reduced, and RoR ILECs should not be allowed to use universal service to make them whole for competitive losses. The benchmarks for reimbursable capital and operating costs are reasonable first steps towards these further, overdue reforms.

In sum, the *Benchmarking Order* reasonably implements the Commission's directive to use regression analysis to limit support for excessive capital and operating costs, and is well within the Commission's authority to exercise its expert judgment in a complex, technical area in the context of a transitional mechanism. The AFRs should be denied.

II. PETITIONERS HAVE NOT MET THE HIGH STANDARDS FOR A STAY

The Stay Petitions fail to make the showings necessary to meet the high standards required to justify a stay. As petitioners concede, they must show that they are likely to prevail on the merits, that they will suffer irreparable harm absent a stay, that interested parties will not be harmed by a stay, and the public interest favors grant of a stay.¹⁶ Petitioners fail on each of these requirements.

For the reasons discussed above, the proponents of the Stay Petitions are unlikely to prevail on the merits. The Commission's limits on reimbursable capital and operating costs are well grounded in both law and policy. For the same reasons, grant of a stay is not in the public interest, as such a stay would impose excessive costs on telecommunications consumers nationwide and undermine the critical universal service reform effort.

Third, interested parties will be harmed if the Stay Petitions are granted. Most concretely, other carriers' customers will be forced to bear the burden of absorbing RoR ILECs'

¹⁶ See, e.g., RLEC Association Stay Petition at 2; EATEL Stay Petition at 6; Silver Star Stay Petition at 1-2.

excessive costs. More generally, without reform, the universal service and intercarrier compensation systems will remain mired in the legacy voice services and technology that consumers are rapidly leaving behind, slowing the introduction of broadband and mobile services in high cost areas. As a result, wireless carriers – and, more importantly, wireless consumers in high cost areas – will be harmed by a stay. Moreover, the Commission’s new USF regime is dependent upon an overall budget for the fund, and if the Commission delays or fails to implement responsible limits on legacy RoR ILEC funding, it would put at risk other funding priorities.

Finally, the Stay Petitions make no valid showing of irreparable harm. Courts have held that economic loss, in and of itself, does not constitute irreparable harm for purposes of analyzing stay requests and “recoverable monetary loss may constitute irreparable harm only where the loss threatens the very existence of the movant’s business.”¹⁷ Neither the Rural Association Stay Petition nor the EATEL Stay Petition asserts that the benchmarks will threaten their existence, and the Silver Star Stay Petition makes only an unsupported, conclusory assertion of such harm. Also, neither petitioner has even attempted to show any harm will result specifically from denial of the stay; rather, the Stay Petitions focus on harms that they claim will result over time from the underlying rule itself. Even if it were true and sufficient, this type of harm is not irreparable harm justifying a stay. Moreover, petitioners simply cannot demonstrate *irreparable* harm because they can establish no *compensable* harm: as the Commission and the courts have made clear multiple times (and as discussed above), the Section 254 requirements for “specific, predictable, and sufficient” universal service mechanisms should benefit consumers writ large – not individual carriers. 47 U.S.C. § 254(b)(5).

¹⁷ *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

CONCLUSION

For these reasons, the Commission should deny the Stay Petitions, dismiss the AFRS, and implement the new benchmarks on reimbursable capital and operating costs in the *Benchmarking Order*.

Respectfully submitted,

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Certificate of Service

I, Shanee Meeks, hereby certify that the foregoing Opposition of CTIA–The Wireless Association was served on this date by sending a copy of the filing by First Class U.S. Mail, postage prepaid, to the parties listed below.

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