

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Petition of CTIA – The Wireless Association and The United States Telecom Association for Clarification and Reconsideration or, in the Alternative, for Waiver of Certain High-Cost Universal Service Rules

WC Docket No. 10-90

WT Docket No. 10-208

**REPLY COMMENTS OF THE USA COALITION**

The Universal Service for America Coalition (“USA Coalition”), by its attorneys, joins the broad consensus urging the Commission to grant the Petition for Clarification and Reconsideration filed by CTIA and the United States Telecom Association (“USTelecom”) (the “Petition”) regarding the new broadband reporting requirements established by the Commission at 47 C.F.R. § 54.313 as applied to CETCs subject to a phase-down in universal service support.

As AT&T correctly noted, the threshold question in determining whether 47 C.F.R. §§ 54.313(a)(1) and (a)(11) should be reconsidered, waived, or eliminated must turn on the potential burdens of the rules versus its purported benefits.<sup>1</sup> To lend additional context to AT&T’s comment, Executive Order 13,563, issued by President Obama in 2011, ordered federal regulators to determine whether the benefits of a regulation justifies its potential costs, taking into account both quantitative and qualitative factors. Chairman Genachowski has since affirmed the FCC’s commitment to the Executive Order and the need to repeal or revise rules that are unduly burdensome.<sup>2</sup> The Commission should consider the Petition in light of this commitment and weigh the significant costs associated with these new reporting requirements against the very limited benefit that they would provide, especially for CETCs subject to a phase-out of support.

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<sup>1</sup> AT&T Comments at 7 (arguing that the requirements are “contravene the stated goals of the Obama Administration and the Commission to reduce regulatory burdens.”).

<sup>2</sup> Letter from Chairman Genachowski, FCC, to Rep. Fred Upton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (June 6, 2011); *see also* House Energy and Commerce Committee Press Release (June 8, 2011) (noting FCC’s commitment to abide by President Obama’s Executive Order 13,563.).

First, as pointed out by several commenters, the broadband reporting requirements of new Rule 54.313(a)(11), pertaining to yet-to-be determined network performance tests and broadband reporting requirements, and Rule 54.313(a)(1), pertaining to five-year broadband deployment service plans, would provide the Commission with no measurable benefit in the case of CETCs whose support is being progressively eliminated.<sup>3</sup> As the Petition notes, the *USF/ICC Transformation Order* specifically stated that CETCs “whose support is being phased down will not be required to submit any of the new information or certifications ... related solely to the new broadband public interest obligations[.]”<sup>4</sup> In light of this statement, the USA Coalition agrees with the Petition’s observation, supported by Verizon, that the imposition of broadband reporting upon *all* ETCs, regardless of whether or not they were recipients of broadband-specific funding, may have been a mere oversight.<sup>5</sup> If so, the Commission should quickly address this issue.

If the imposition of broadband network reporting to *all* ETCs was not an oversight, however, the collection of broadband deployment data from all supported carriers provides the Commission with no beneficial information related to its stated goals of “monitoring progress in achieving its broadband goals” and determining whether “funds are being used appropriately.”<sup>6</sup> As AT&T, CenturyLINK, NECA and Verizon all note, broadband reporting makes sense for carriers receiving ongoing broadband support through the CAF Phase II, but no sense whatsoever for carriers receiving a diminishing level of non-broadband legacy high cost support.<sup>7</sup>

With regard to service deployment plan reporting required by Rule 54.313(a)(1), several parties correctly note that support for CETCs will be phased out within five years, with no

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<sup>3</sup> CenturyLINK Comments at 3; NECA Comments at 5.

<sup>4</sup> Petition at 5-6, quoting *USF/ICC Transformation Order* at ¶ 583.

<sup>5</sup> Verizon Comments at 2; Petition at 5-6

<sup>6</sup> AT&T Comments at 2.

<sup>7</sup> *Id* at 2; CenturyLINK Comments at 6-7; NECA Comments at 5; Verizon Comments at 2-3.

guarantee that additional funds will be forthcoming.<sup>8</sup> Faced with diminishing support, existing plans are highly uncertain at best and further extrapolation based upon assumptions regarding potential future support (or lack thereof) through a yet-to-be-adopted mechanism is even more questionable.<sup>9</sup> As AT&T persuasively argues, “[u]nder the circumstances, it would serve no purpose in having a competitive ETC submit a “service quality improvement plan” describing proposed network improvements or upgrades over a five-year period when they are likely to have none.”<sup>10</sup> For these reasons, the FCC should grant the Petition’s request that the obligations of Rule 54.313(a)(1) be applied only to recipients of CAF II support.

The USA Coalition also agrees with the commenters who argue that the FCC should reconsider or clarify 47 C.F.R. § 54.313(a)(11), which would require *all* ETCs to undertake broadband performance testing as well as separately report for broadband all of the information required by Rules 54.313(a)(1) through (a)(7). Beyond the valid concern that imposing such an obligation upon ETCs that do not receive broadband funding exceeds the Commission’s authority in light of the *Comcast* decision,<sup>11</sup> the requirement makes little sense as applied to CETCs. Not only are traditional voice carriers not necessarily equipped to measure broadband,<sup>12</sup> but also, without a standard to be measured against, the information obtained would be of little use.<sup>13</sup> In the words of CenturyLINK, “whatever the Commission intends, no methodology has been provided. Until any methodology is set, it is impossible for ETCs to collect the necessary data, let alone report on it.”<sup>14</sup> As the old saw goes: garbage in, garbage out.

Further, collecting the broadband data required by Rules 54.313(a)(1) through (a)(7) from CETCs subject to diminishing funding would not necessarily provide the Commission with

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<sup>8</sup> NECA Comments at 5; AT&T Comments at 8.

<sup>9</sup> *Accord* Petition at 14.

<sup>10</sup> AT&T Comments at 8.

<sup>11</sup> *See* CenturyLINK Comments at 5-6.

<sup>12</sup> Petition at 7.

<sup>13</sup> Verizon Comments at 4.

<sup>14</sup> CenturyLINK Comments at 10.

useful information regarding broadband deployment. Faced with the loss of all support within five years and no guarantee of future support, CETCs can be expected to use their diminishing levels of support to maintain existing voice networks, which may or not support the provision of broadband services.<sup>15</sup> Where legacy support could be permissibly used to provide solely “voice telephony service” or a combination of voice and broadband service, the reporting obligation would provide the FCC with little actionable information related to broadband deployment. Simply put, the variable the Commission is interested in – broadband deployment – could not be reasonably isolated when support may be used for multiple purposes and in the larger context of a progressive phase-down of funding. For the same reason, collecting this information would provide no additional insight into whether funds were being used appropriately because funds may permissibly be used by CETCs to support services other than broadband.<sup>16</sup> Thus, there are no tangible benefits to be derived by applying broadband reporting requirements to CETCs.

While the benefits of these new Rules are unclear at best (and very likely non-existent), the burdens of complying are well documented by the commenting parties. For its part, NECA noted that “[b]oth section 54.313(a)(11) and 54.313(a)(1)... place additional burdens on ETCs to perform network broadband testing, compile data, assemble reports, create network plans, and file progress reports.”<sup>17</sup> To make matters worse, no reporting methodology currently exists.<sup>18</sup> Would reporting parties be required to submit this data even if they had no existing means with which to acquire it?<sup>19</sup> As many commenters noted, this work would all have to be done on an expedited basis in order to meet the July 1, 2013 deadline, a prospect that even large carriers like

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<sup>15</sup> AT&T Comments at 8.

<sup>16</sup> AT&T Comments at 2-3; Verizon Comments at 2.

<sup>17</sup> NECA Comments at 5.

<sup>18</sup> CenturyLINK Comments at 10.

<sup>19</sup> Verizon Comments at 4 (“whatever the Commission intends, no methodology has been provided. Until any methodology is set, it is impossible for ETCs to collect the necessary data, let alone report on it.”).

AT&T and Verizon deem to be “unreasonable”<sup>20</sup> and others see as “impossible.”<sup>21</sup> As regards the progress reports under section 54.313(a)(1), it was oft-repeated that the expense of preparing such reports far outweighs any benefit the Commission could derive from them.<sup>22</sup> In addition to being far out of proportion to any derived benefits, these burdens divert time, funds, and energy away from those who already face diminishing support.<sup>23</sup>

For these reasons, the Commission should recognize that the burdens associated with applying Rules 54.313(a)(1) and 54.313(a)(11) to CETCs subject to a phase-down in support far outweighs any potential benefits. In keeping with the Commission’s promise to abide by Executive Order 13,563, the Commission should grant the CTIA and USTelecom Petition and clarify, waive, or remove these Rules as applied to CETCs.

Respectfully submitted,



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<sup>20</sup> AT&T Comments at 4; Verizon Comments at 4;  
<sup>21</sup> CenturyLINK Comments at 11; *accord* Petition at 7.  
<sup>22</sup> AT&T Comments at 7; CenturyLINK Comments at 12.  
<sup>23</sup> *Accord* NECA Comments at 5.