



April 24, 2013

***Ex Parte Notice***

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: *Connect America Fund, WC Docket No. 10-90; High-Cost Universal Service Support, WC Docket No. 05-337; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92***

Dear Ms. Dortch:

On April 22, 2013, Douglas Boone of Premier Communications (Premier) and I met with Priscilla Argeris of Commissioner Jessica Rosenworcel's office to discuss the Safety Net Additive (SNA) component of the universal service fund (USF).

In the *Transformation Order*,<sup>1</sup> the Commission eliminated SNA, noting that many carriers became eligible for SNA when line-loss, rather than new investment, caused per-line telecommunications plant in service (TPIS) to increase. In a petition for reconsideration, several industry representatives urged the Commission to instead base SNA eligibility on year-over-year changes in total, rather than per-line, TPIS.<sup>2</sup> Absent that change, the Commission was urged to reconsider the retroactive applicability of the new standards to carriers that had a qualifying

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<sup>1</sup> *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, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17756-17758, paras. 248-252 (2011)(USF/ICC Transformation Order).*

<sup>2</sup> *See* Petition for Reconsideration and Clarification of the National Exchange Carrier Association, Inc.; Organization for the Promotion and Advancement of Small Telecommunications Companies; and Western Telecommunications Alliance, 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 (fil. Dec. 29, 2011), pp. 14-15 (NECA, OPASTCO, WTA Petition for Reconsideration).

increase to total TPIS in 2010 or 2011, and to therefore ensure that carriers could recover costs incurred on the basis of rules that were in place at the time those costs were incurred.

In this regard, Premier explained that in 2009 it undertook a three-year plan to replace 40 year-old plant. The implementation of its deployment strategy over three years was based upon prudent planning; ironically, if Premier had elected to overhaul its network in a single one-year period of 2009, it would have been able to recover all costs incurred for the same deployment that have now been cast as ineligible. Premier's expectations to recover costs through SNA were based on careful planned investment, not line loss.

If the Commission were to change the TPIS standard to *total*, rather than *per-line*, and eliminate the retroactive nature of the rule to accept costs incurred *before* the rule changes, then the total impact on the overall USF would be an increase of less than one-quarter percent (0.23 percent).<sup>3</sup>

The most troubling aspect of the SNA elimination is the retroactive nature of the rule change: due to the two-year lag between expenditures and recovery, carriers could make investments with assurance that a portion of the costs would be recovered through the SNA. Although there are several troubling retroactively applicable caps under the order, the SNA flash-cut for investment-qualified companies is particularly troubling because there was no reasonable notice that it would be forthcoming; until its adoption, every possible indication from the Commission to those considering investments was that SNA was only in question and under consideration for possible elimination due to concerns about line loss-based qualification. Moreover, unlike other caps that were at least phased in, those qualifying based upon investments in 2010 and 2011 lost *all* access to SNA support right away, thereby revoking a critical cost recovery revenue stream just when it was needed most and in a fashion flatly contrary to the Commission's professed commitment to "no flash cuts" in reform.

SNA was a clear and defined program aimed at ensuring that the smallest, most vulnerable community-based providers could have confidence to invest and meet the Commission's and National goals of increased deployment of telecommunications and advanced services. Boiled down to its essential elements, SNA assured carriers that if their investments exceeded a defined amount, they would be eligible to recover those costs. SNA was carrier-specific, and offered an eponymous regulatory safety net for carriers to invest and rely upon future recovery. The flash-cut, retroactive applicability of SNA elimination to investments made during the time at which that assurance was offered is baldly inconsistent with equity and risks undermining any confidence or sense of regulatory certainty for future investment given the constant delay between the incurring and recovery of costs.

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<sup>3</sup> In 2012, carriers that qualified as a result of costs incurred in 2010 would receive a total of \$5.3 million. In 2013, the total cost would increase to \$10.4 million, because an additional \$5.1 million would be added for carriers that qualified due to costs incurred in 2011. The \$10.4 million would remain constant as those costs were reimbursed during 2014-2016. In 2017, the cost would reduce to \$5.1 million, the amounts incurred in 2011, the last year in which SNA rules were effective. \$10.4 million is approximately 0.23 percent of \$9 billion, the overall size of the USF.

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Premier expressed its request that the Commission retract the retroactive applicability of the SNA elimination and assure recovery of 2010 and 2011 investments that resulted in total TPIS costs.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS. Please do not hesitate to contact me if you have any questions or require additional information.

Submitted respectfully,

*s/ Joshua Seidemann*

Joshua Seidemann

cc: Priscilla Aregris