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

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

FRONTIER COMMUNICATIONS CORPORATION
PETITION FOR RECONSIDERATION
OF ACTION TAKEN PURSUANT TO DELEGATED AUTHORITY

I. INTRODUCTION AND SUMMARY

Pursuant to Section 1.106 of the Commission's rules,[1] Frontier Communications Corporation ("Frontier") hereby seeks reconsideration of the Order adopted by the Deputy Chief, Wireline Competition Bureau ("Bureau") on July 1, 2013 in the above captioned proceeding,[2] addressing the Frontier Petition for Waiver.[3] The Bureau declined to adopt a waiver of section 54.318(i) of the Commission's rules that would allow Frontier and other petitioners[4] to use a weighted average of local rates for purposes of determining whether local rates meet the rate

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1 *See* 47 C.F.R. § 1.106(a) ("Petitions requesting reconsideration or other final actions taken pursuant to delegated authority will be acted on by the designated authority of referred by such authority to the Commission."); 47 C.F.R. §1.106(f) ("The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action…").

2 *See Connect America Fund; High-Cost Universal Service Support*, Order, WC Docket Nos. 10-90 and 05-337 (Wireline Comp. Bur. rel. July 1, 2013) ("Order" or "Rate Floor Order").

3 *Connect America Fund; High-Cost Universal Service Support*, Frontier Communications Corporation Petition for Waiver of Sections 54.313(a)(10) and 54.318.(i) of the Commission's Rules or for Rulemaking To Modify Section 54.318(i) of the Commission's Rules, WC Docket Nos. 10-90 and 05-337 (filed Dec. 7, 2012) ("Petition" or "Frontier Petition").

4 The Bureau also addresses in the Order petitions filed by Armstrong Telephone Company – Northern Division, Armstrong Telephone Company – West Virginia, Hardy Telecommunications, Inc., and Spruce Knob Seneca Rocks Telephone, Inc. (collectively, the "West Virginia Companies") seeking effectively the same relief as that requested by Frontier. *See* Rate Floor Order at ¶ 7.

floor requirement.[5] In a footnote, the Bureau also declined to address Frontier's request that, in the alternative, the Commission initiate a rulemaking proceeding to establish an alternate method for establishing compliance with the rate floor and assessing rate comparability.[6]

The Bureau's Order should be reconsidered. With regard to the requested waiver of section 54.318(i), the Bureau has based its decision on an assumption that is factually inaccurate, and it has failed to appropriately apply the waiver standard. Enforcement of section 54.318(i) for the non-Lifeline lines of Frontier will cause it to bear losses of high-cost support contrary to the purpose of the rule, given the history of West Virginia local rate setting and Frontier's high basic flat-rate local plan, and to the detriment of Frontier's customers in West Virginia.[7]

II. ARGUMENT

A. Frontier's Low Cost Measured Rate Plan Is Not Subsidized By Its Higher Cost Rate Plans.

Frontier offers four different rate plans in West Virginia to respond to customer calling needs and budgets, ranging from the most basic local plan that offers only measured service for local calls and the opportunity for customers to minimize their telephone expenses, to the most comprehensive plan that offers unlimited basic flat-rate calling throughout the entire local calling area. Three of the four rate plans each meet the rate floor requirement and account for nearly all

5 *See* Rate Floor Order at ¶ 9. The Bureau waived the application of section 54.318(i) for lines of Lifeline customers. *See id.* Frontier and the West Virginia Companies also sought a waiver of section 54.313(a)(10) regarding the use of a weighted average of their rates as the basis for determining compliance with the comparability requirement, but the Bureau found that no waiver was necessary for compliance with this rule because a carrier is in compliance with section 54.313(a)(10) as long "[a]s long as … [it] offers at least one voice service offering that meets the rate comparability requirement." *Id*. at ¶ 18.

6 *See* Rate Floor Order, n. 6.

7 Only 13% of Frontier's residential subscribers choose its measured service plan, Plan 1. *See* Frontier Petition at 3. Based on 2013 data, the percentage of customers subscribing to Plan 1 has fallen to 11.8%.

of the carrier's subscribers.[8] Only a small percentage of Frontier's subscribers choose the lowest cost measured service plan, but as the West Virginia Public Service Commission ("WVPSC") noted in its comments, many of the customers choosing this plan are non-Lifeline elderly and low-income customers who cannot afford to pay more than the Plan 1 rate.[9]

The Bureau inaccurately assumes that the WVPSC is maintaining artificially low rates for the customers subscribing to its basic measured service plan through cross-subsidies from its higher rate plans.[10] In setting the rates for its four rate plans, however, the WVPSC has not intentionally or unintentionally implemented cross-subsidies that would violate Congressional intent or Commission implementation of the universal service requirements of the Communications Act. Rather, the WVPSC has established calling plans at correspondingly appropriate rates to meet the needs of West Virginia customers – higher rates for more comprehensive services, lower rates for more basic services.[11] In every case the choice is up to the individual customer, not to Frontier and not to the regulator. If Frontier were to raise the rate of its lowest tiered plan to meet the $14 rate floor, it would either be charging customers more than the market will bear for that basic service, or increasing the amount of services provided at

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8 Frontier provides service to 87% of its subscribers through rate plans 2, 3, and 4. *See* Frontier Petition at 5. Significantly, based on 2012 data included in the Petition for Waiver 69% of Frontier's subscribers – over two-thirds – choose the most expensive rate plan at $29 per month. *See* Frontier Petition at 4 and 7. By 2013 this number had risen to 73%.

9 *See Connect America Fund; High-Cost Universal Service Support*, WVPSC Comments, WC Docket Nos. 10-90 and 05-337, at 7 (filed Feb. 27, 2013) and *Connect America Fund; High-Cost Universal Service Support*, WVPSC Comments, WC Docket Nos. 10-90 and 05-337, at 6 (filed Feb. 5, 2013).

10 *See* Rate Floor Order, ¶ 12.

11 As Frontier explained, customers choosing the higher-priced Plan 4 enjoy flat-rated calling for all calls, while customers choosing the lower-priced Plan 1 opt for measured service for all calls. *See* Frontier Petition at 5-6.

the raised rate and charging customers for services they do not want and cannot afford. Frontier expects that if it increased its Plan 1 rate to the rate floor requirement, many subscribers would drop landline service altogether, cutting their access to essential telecommunications and access to E911 services. It is counterintuitive to expect that limiting customer choice and raising the rate for Plan 1 measured service will promote competitive alternatives for consumers that need a lower-cost plan.[12]

As Frontier explained in its Petition, the weighted average of all four of its rate plans is approximately $25, which is $11 more than the $14 rate floor requirement.[13] While Frontier might be able to restructure its rate plans, subject to state rate requirements, such that all rate plans met the rate floor requirement and not put itself at risk for losing any of its universal service support,[14] doing so would not be serving the needs of all of Frontier's customers, particularly those most in need of affordable basic service. It is contrary to the purpose of section 54.318(i) to limit Frontier's universal service support on the basis that its lowest tier plan does not meet the rate floor requirement when that offering is driven by customer need combined with the fact that the overall structuring and subscribership of Frontier's four rate plans result in a weighted average rate that greatly exceeds the rate floor requirement.

Ironically, if another carrier charged $14 across the board for local service, it apparently would be qualified for support in the Bureau's judgment, though the total revenues per customer

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12 *See* Rate Floor Order, ¶ 12.

13 *See* Frontier Petition at 5.

14 Similarly, Frontier could lower the rate of its most expensive Plan 4, again subject to state rate requirements, such that with the addition of various other fees and surcharges it would not exceed the $30 residential rate ceiling and would be entitled to impose the Access Recovery Charge on all its customer, maximizing its potential support. *See* Frontier Petition at 4 and note 26. However, Frontier has not done so.

would only just meet the bare minimum of $14. In contrast, Frontier is penalized for providing a variety of local calling plans and having an average basic service revenues in West Virginia that exceed $25.[15] Frontier's plan structure is *not* a form of intra-company cross subsidies, nor does it pervert Congressional intent of sufficient support to ensure reasonably comparable services. Given that Frontier's West Virginia customers contribute far more than the minimum revenue specified by the FCC's rules, the Commission should not put itself in the position of dictating rate structures within individual states. The Commission should encourage the customer calling plan choices provided by Frontier's West Virginia local calling plans, and continue to provide universal service support where consumers subscribe to low-cost services, as long as the weighted average of Frontier's local rates meet or exceed the required rate floor.

B. The Purpose Of A Waiver Is To Address Variances Needed By Individual Carriers; A Rulemaking Is Appropriate When Broader Rule Changes Are Necessary.

A waiver of the Commission's rules is appropriately sought when a carrier can demonstrate that special circumstances warrant deviation, and strict compliance with the rule for the carrier requesting the waiver would be inconsistent with the public interest. The Commission may take into account considerations of hardship, equity and more effective implementation of policy on an individual basis.[16]

In the Petition, Frontier demonstrated that, due to its unique set of calling plans, and its overall mix of customers yielding an average of $25 per line per month, strict application of the rule in this case would disserve the public interest. It is not consistent with the purposes of

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15 At the time that Frontier filed its petition, the average local monthly revenue in West Virginia was almost $25. Based on June 2013 data, its average monthly local revenue is now $25.50.

16 *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C.Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C.Cir. 1969).

waiver relief to insist that Frontier demonstrate that use of a weighted average in Frontier's case in West Virginia would not lead to similar requests for relief from other carriers having an array of service offerings.[17] Indeed, the evidence the Bureau had before it was that Frontier's West Virginia rates are unique and that there are no other states that have similar rate structures. Rather, the Bureau should have considered the public interest harms resulting from insistence on strict compliance with the rule, and given weight to Frontier's overall rates which, on average, are well above the rate floor. Frontier has not requested that it be relieved from the rate floor requirement; rather it has requested a variance in how it may demonstrate compliance with the rule. To the extent that other carriers can demonstrate unique circumstances warranting a waiver, they too can seek a waiver, but Frontier is unaware of any similarly situated carriers outside the state of West Virginia.

If the Commission elects in the alternative to initiate a rulemaking to amend section 54.318(i), as Frontier suggested in its Petition, to allow carriers with multiple rate plans to use weighted averaging to demonstrate compliance with the rate floor requirement, it may continue to insist that, on average, carriers collect at least $14 per line per month, and may require that particular plans be priced in a manner that reasonably reflects the services received. In this way, the Commission can ensure that consumers "are not contributing to the Fund to support customers whose rates are below a reasonable level."[18] In contrast, simply applying the rule as

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[17] *See* Rate Floor Order, ¶ 13. If the Bureau was actually concerned that other carriers would change their calling plans to mimic Frontier's West Virginia plan in order to avoid the rate floor, this could have been easily addressed by grandfathering the waiver to apply only to those calling plans existing on the effective date of the Commission's rules, December 2011.

[18] Rate Floor Order, ¶10.

written, without regard to the merits of individual rate plans such as Frontier's, disserves the universal service goals of the Act without ensuring that any particular rates are reasonable.

III. CONCLUSION

There is good cause to grant this Petition for Reconsideration. The Commission should reverse the Order as a result of the Bureau's inaccurate assumptions about cross-subsidies, as well as its failure to appropriately apply the waiver standard to the request before it. Frontier requests a permanent waiver of rule section 54.318(i) as set forth in its Petition. However, if the requested permanent waiver is not granted, then Frontier requests a temporary waiver of rule section 54.318(i) pending completion of a rulemaking that will provide an additional method in rule section 54.318(i) for measuring rates for purposes of meeting the rate floor when a carrier's customers may select from optional service plans with varying rate structures. The requested waiver, or in the alternative the requested rule change, is necessary to ensure universal availability of voice and broadband services for its customers in West Virginia.

Respectfully submitted,

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