

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

In the Matter of)	
)	
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 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

COMMENTS OF SPRINT CORPORATION

Sprint Corporation (“Sprint”), pursuant to the Public Notice released on July 15, 2014 (DA 14-1001), hereby respectfully submits its opposition to the emergency petition for waiver filed by NTCA, NECA, ITTA, the Eastern Rural Telecom Association, WTA-Advocates for Rural Broadband, Frontier Communications Corp., and Windstream Communications, Inc. (collectively, “ILEC Petitioners”) on July 7, 2014. The ILEC Petitioners have requested that the Commission waive section 51.913(a) of the Rules, retroactively effective to June 30, 2014, to “pause” any reductions in intercarrier compensation rates for originating intrastate toll VoIP traffic until the Connect America Fund (“CAF”) Phase II and RLEC CAF mechanisms are fully implemented.

This waiver petition should be denied. Having failed through the reconsideration process to undo Section 51.913(a),¹ the ILEC Petitioners have now turned to the waiver process in their quest to increase the rates assessed on originating intrastate toll VoIP traffic. However, this waiver petition, like the previously denied reconsideration petitions, fails to balance the policy goals underlying the FCC's ICC/USF reforms generally and the transition of VoIP intercarrier compensation specifically. In addition, the ILEC Petitioners have failed to demonstrate any special circumstances which would justify grant of their waiver request, and have arbitrarily linked their requested relief to pending reforms which are unrelated to the VoIP traffic at issue here.

1. The Requested Waiver Would Upset the Careful Balancing of Policy Goals

The Commission has consistently emphasized that comprehensive ICC and USF reform, including changes to the rules governing VoIP traffic, involves a careful balancing of sometimes competing policy goals² -- a necessity that the ILEC Petitioners here acknowledge (Petition, p. 6) even as they focus on maximizing their intrastate revenue streams. In evaluating the instant petition for waiver, the Commission must again balance the equities, as it did in the *Transformation Order* and the *Second Order on Reconsideration*. Sprint is confident that this analysis will affirm that the ILEC Petitioners' waiver request is inconsistent with the overall public interest. Allowing the

¹ Petition, p. 3 (summarizing the petitions for reconsideration of the *Transformation Order* filed by NECA/OPASTCO/WTA and Frontier/Windstream).

² See, e.g., *Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking ("Transformation Order")*, 26 FCC Rcd 17663, para. 935 (2011) (the mandated changes to intercarrier compensation for VoIP traffic "best balance[] the competing policy goals during the transition to the final intercarrier compensation regime"); *Connect America Fund et al., Second Order on Reconsideration*, released April 25, 2012 (FCC 12-47), para. 1 (the *Transformation Order* represents "a careful balancing of policy goals, equities, and budgetary constraints").

ILECs to increase their intrastate originating VoIP rates to June 30, 2014 levels, and to keep those rates at those elevated levels for some unknown period of time, will have multiple deleterious effects, including:

- An immediate increase in the costs incurred by other service providers, and a “pause” in mandated future rate decreases. Such cost increases will divert funds that VoIP service providers might otherwise have used to decrease rates to their subscribers, to invest in additional broadband deployment, or for other productive uses.
- Discourage the rapid migration to an all-IP network by allowing the ILEC Petitioners to maintain the access revenue streams associated with the VoIP traffic at issue here.
- Discourage the transition to bill-and-keep, which is a far more economically rational ICC mechanism than the access-based regime which the ILEC Petitioners seek to perpetuate, by enabling their continued reliance on ICC revenues.

The ILEC Petitioners have made no attempt to balance the equities in their waiver petition, or to rebut the Commission’s conclusion in the *Second Order on Reconsideration* (para. 35) that “indefinitely permitting origination charges at the level of intrastate access for prospective intrastate toll VoIP traffic is not necessary to ensure a measured transition and is indeed in tension with our overall policy goal of encouraging a migration to all IP networks and moving away from reliance on ICC revenues.” Given the serious negative effects listed above, the ILEC Petitioners’ request for waiver of Section 51.913(a) should be denied.

2. ILEC Petitioners Have Failed to Show Good Cause or Special Circumstances that Might Justify the Requested Waiver.

As noted above, various of the ILEC Petitioners filed petitions for reconsideration of the *Transformation Order* in 2011 requesting clarification that originating intrastate toll VoIP traffic was subject to default rates equal to originating intrastate access rates. The Commission rejected those petitions for reconsideration, but, in recognition of the

fact that ILECs did receive some intrastate access revenues on originating VoIP toll traffic, allowed the ILECs to continue to assess intrastate originating access rates on this VoIP traffic on a temporary (until June 30, 2014) basis.³ The Commission emphasized that “[t]his targeted modification is intended to be transitional and temporary and does not alter the overall, uniform, national framework for comprehensive intercarrier compensation reform which was established in the *USF/ICC Transformation Order*.”⁴

Not content with the additional two years’ grace period to transition away from the access charge-based ICC regime for the VoIP traffic at issue here, the ILEC Petitioners now request that Section 51.913(a) be waived until such time as CAF Phase II and the RLEC CAF mechanisms are fully implemented. However, the ILEC Petitioners do not even attempt to make the type of showing required to justify a waiver request. They have not presented particular facts demonstrating that strict compliance with Section 51.913(a) of the Rules would be inconsistent with the public interest,⁵ nor have they argued hardship, equity or other factors which would justify waiver of the rules.⁶ On purely procedural grounds – failure to show special circumstances to justify a waiver – the instant waiver request must be denied.

To compound the infirmities of their waiver request, the ILEC Petitioners arbitrarily link implementation of CAF mechanisms to implementation of Section 51.913(a). However, there is no nexus between adoption of new USF mechanisms and grant of the requested waiver.

³ *Second Order on Reconsideration*, para. 35.

⁴ *Id.*, para. 2.

⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir 1969).

In the *Second Order on Reconsideration*, the Commission rejected Frontier-Windstream’s proposal to allow LECs to offset lost originating access revenues with universal service subsidies.⁷ The ILEC Petitioners acknowledge this decision and concede that any revenue losses associated with transitioning originating intrastate toll VoIP rates to interstate levels “will not be offset via the CAF ICC mechanism.”⁸ Under such circumstances, there is no logical reason to link the mandated rate transition to implementation of CAF Phase II or the RLEC CAF mechanism. There is no merit to granting such an arbitrary waiver request.

Respectfully submitted,

SPRINT CORPORATION

/s/ Charles W. McKee

Charles W. McKee
Vice President, Government Affairs
Federal and State Regulatory

Norina T. Moy
Director, Government Affairs

900 Seventh St. NW, Suite 700
Washington, DC 20001
(703) 433-4503

August 4, 2014

⁷ *Second Order on Reconsideration*, footnote 97.

⁸ Petition, p. 8.