

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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 AT&T SERVICES, INC.

AT&T Services, Inc., on behalf of itself and its affiliates (AT&T), respectfully urges the Commission to deny the Emergency Petition for Waiver of section 51.913(a) filed in the above-referenced dockets.¹ Specifically, petitioners “request that the Commission waive the application of Section 51.913(a) of its rules and thereby pause, effective June 30, 2014, any reductions in intercarrier compensation (‘ICC’) rates for originating intrastate toll Voice over Internet Protocol (‘VoIP’) traffic until full implementation of the Connect America Fund (‘CAF’) Phase II mechanism, in the case of price cap carriers, or a tailored CAF mechanism for

¹ Emergency Petition for Waiver of NTCA-The Rural Broadband Association, The National Exchange Carrier Association, ITTA, The Eastern Rural Telecom Association, WTA-Advocates for Rural Broadband, Frontier Communications Corporation, and Windstream Communications, Inc., WC Docket No. 10-90 *et al.* (filed July 7, 2014) (“Petition”).

rural, rate of return-regulated carriers ('RLECs'), respectively.”² The Petition fails to demonstrate that the requested waiver is warranted for good cause or that it would be consistent with the public interest.³

As petitioners acknowledge, the *USF/ICC Transformation Order* is a “careful balance”⁴ between competing, complex policy issues with universal service and broadband deployment at stake for all consumers.⁵ After over a decade, the Commission faced head-on difficult policy choices in which no party was happy with every aspect of the order or was ensured that they would be made whole in the reforms.⁶ The reforms of intercarrier compensation—to move toward the eventual end-state of bill-and-keep for all traffic exchanged with a LEC—were particularly hard fought across the industry. The prospective compensation regime for VoIP-PSTN traffic was a critical part of the careful balance struck by the Commission in the wake of years of intractable disputes about the applicability of access charges to VoIP traffic.⁷

Even so, the Commission took up petitions for reconsideration filed by Frontier-Windstream and a group of rural associations seeking a change in the prospective payment

² Petition at 2 (footnote omitted).

³ 47 C.F.R. § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”). The Commission may exercise its discretion to waive a regulation where the particular facts make strict compliance inconsistent with the public interest. *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

⁴ Petition at 5, 6.

⁵ *See generally Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *petitions for rev. denied sub nom*, *In re* FCC 11-161, --- F.3d ---, 2014 WL 2142106 (10th Cir. May 23, 2014).

⁶ *See, e.g., USF/ICC Transformation Order* at para. 38 (“In defining how much of their lost revenues carriers will have the opportunity to recover, we reject the notion that ICC reform should be revenue neutral.”).

⁷ *See id.* at paras. 943-46.

obligations the Commission had finally put in place for VoIP-PSTN traffic.⁸ Indeed, the Commission granted reconsideration and allowed carriers to “tariff default charges equal to intrastate originating access for originating intrastate toll VoIP traffic . . . at intrastate rates until June 30, 2014.”⁹ Still not satisfied with the result, Windstream appealed. On May 23, 2014, the Tenth Circuit upheld the *USF/ICC Transformation Order* in its entirety—including the Commission’s reconsideration of the compensation rules for VoIP-PSTN traffic.¹⁰ June 30, 2014 has now come and gone, and petitioners are back again on this issue—this time trying to “pause” access reductions for VoIP-PSTN traffic that are well underway.

Petitioners offer two rationales for a waiver; neither demonstrates good cause or a compelling public interest that would warrant grant of the waiver.¹¹ First, petitioners argue that “[r]elief is thus needed to ensure that carriers operating in high-cost areas have access to cash flows needed to invest in broadband-capable, multi-use networks even as the CAF program that

⁸ See Frontier Communications Corp. and Windstream Communications, Inc., Petition for Reconsideration and/or Clarification, WC Docket No. 10-90, *et al.* (filed Dec. 29, 2011); NECA, OPASTCO, WTA Petition for Reconsideration and Clarification, WC Docket No. 10-90, *et al.* (filed Dec. 29, 2011).

⁹ *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Second Order on Reconsideration, 27 FCC Rcd 4648, para. 30 (2012) (*Reconsideration Order*), *petitions for rev. denied sub nom, In re FCC 11-161*, 2014 WL 2142106 at *1154-*1159. In the *Reconsideration Order*, the Commission explained that it used “the term ‘VoIP traffic’ or the like as synonymous with the terms ‘VoIP-PSTN traffic,’ or ‘VoIP-PSTN intercarrier compensation,’ or the like as used in the *USF/ICC Transformation Order*.” *Reconsideration Order* at n.66. In turn, the *USF/ICC Transformation Order* states that “‘VoIP-PSTN traffic’ is ‘traffic exchanged over PSTN facilities that originates and/or terminates in IP format.’” *USF/ICC Transformation Order* at para. 940. The *Reconsideration Order* in no way extended the intercarrier compensation regime to traffic that is in Internet Protocol format from end-to-end.

¹⁰ See *In re FCC 11-161*, 2014 WL 2142106 at *1154-*1159.

¹¹ The Petition reprises a number of arguments about the meaning of the original rules. See Petition at 3-4. The Commission has already soundly rejected that line of reasoning. See *Reconsideration Order* at para. 31 (“We disagree with claims that statements in other sections of the *USF/ICC Transformation Order* discussing, for example, the Commission’s general intent to address reductions to originating access in the FNPRM, imply that the Commission took a particular approach to origination charges for VoIP traffic. The *USF/ICC Transformation Order* adopted a distinct prospective intercarrier compensation framework for VoIP traffic based on its findings specific to that traffic. Contrary to the Petitions’ claims, the *USF/ICC Transformation Order*’s treatment or discussion of originating access charges in other contexts do not constrain the interpretation of permissible origination charges for toll VoIP traffic.”) (footnotes omitted).

might otherwise have provided at least some level of relief continues to be implemented.”¹²

When it decided to allow intrastate rate levels for this traffic until June 30, 2014, the Commission made a considered policy choice. Although the Commission found reconsideration to be warranted at the time, it explained 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.”¹³ Those policy goals are even more important today. Granting a waiver—or “pause”—of these rate reductions already in place would convey lack of confidence by the Commission in its own transition plan and would cause financial and regulatory uncertainty to skyrocket, undermining rather than promoting investment in broadband networks.¹⁴

Second, petitioners contend that implementing interstate rate levels for originating, intrastate VoIP-PSTN traffic creates a new arbitrage opportunity.¹⁵ In fact, just the opposite is true. Moving all VoIP-PSTN traffic to a single, unified rate—originating and terminating—at the interstate level removes one of the many rate disparities that distort the intercarrier compensation regime and foster arbitrage. While the Commission appropriately adopted a measured transition of rates to limit shock to the industry, each step toward unified rates, and ultimately bill-and-keep for all traffic exchanged with a LEC, wrings inefficiencies out of the

¹² Petition at 8.

¹³ *Reconsideration Order* at para. 35 (footnotes omitted). At no time did the Commission indicate its intent that implementation of this rule would be contingent on implementation of a recovery mechanism for this traffic.

¹⁴ See *USF/ICC Transformation Order* at para. 9 (“[W]e need to provide more certainty and predictability regarding revenues to enable carriers to invest in modern, IP networks.”).

¹⁵ See Petition at 8.

system.¹⁶ Undoubtedly, some incentives for arbitrage schemes persist due to disparities during the transition but the point of the transition is to continue moving rates in the right direction. Petitioners instead ask the Commission to take a step back, ensuring continued incentives for some bad actors to disguise the jurisdiction of VoIP-PSTN traffic.

In sum, modifying the application of the VoIP-PSTN rule yet again would upset the considered decisions of the *Reconsideration Order*, disrupt the careful balance of the overall *USF-ICC Transformation Order* reforms, and would create very uncertainty in compensation for VoIP-PSTN traffic that petitioners claim they want to avoid. Thus, the Commission should reject petitioners request for a waiver of section 51.913(a) of the Commission's rules pending implementation of CAF support.

Finally, although styled as a petition for waiver, Petitioners' goal seems to be to expand CAF support to provide for recovery of access revenue reductions for these services.¹⁷ That is an entirely separate matter from the requested waiver that would reverse the careful balance of long-sought access reforms that are well underway. As the Commission explained, "[its] recovery mechanism is designed to provide predictability to incumbent carriers that had been receiving implicit ICC subsidies, to mitigate marketplace disruption during the reform transition, and to ensure [its] intercarrier compensation reforms do not unintentionally undermine [its] objectives for universal service reform."¹⁸ Support for these revenue reductions under the *USF/ICC*

¹⁶ See *USF/ICC Transformation Order* at para. 764 ("Consistent with our approach to comprehensive reform generally and the desire for a more unified approach, we find it appropriate to bring all traffic within the section 251(b)(5) regime at this time, and commenters generally agree. Doing so is key to advancing our goals of encouraging migration to modern, all IP networks; eliminating arbitrage and competitive distortions; and eliminating the thicket of disparate intercarrier compensation rates and payments that are ultimately borne by consumers.") (footnotes omitted).

¹⁷ See *id.* at 2 (seeking waiver only until full implementation of the CAF mechanisms for price-cap and rural, rate of return-regulated carriers respectively).

¹⁸ *USF/ICC Transformation Order* at para. 858.

Transformation Order's recovery mechanism would be entirely consistent with the Commission's policy objectives, and therefore, AT&T supports including lost access revenues for intrastate originating VoIP-PSTN traffic in carriers' Eligible Recovery. This recovery issue, however, provides no justification for a waiver of—or a “pause” in implementation of—section 51.913(a).¹⁹

For these reasons, petitioners have not demonstrated that a waiver is warranted, and therefore, AT&T respectfully urges the Commission to deny the Petition.

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Respectfully submitted,

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¹⁹ Indeed, a “pause” in any of the intercarrier compensation transition would be a dangerous first step down a potentially slippery slope of undermining all of comprehensive intercarrier compensation reform. *Contra* Letter to Marlene H. Dortch, Secretary, FCC, from Michael R. Romano, NTCA—The Rural Broadband Association (on behalf of NTCA, CenturyLink, Frontier, ITTA, and Windstream) (filed June 10, 2014) (suggesting that all intercarrier compensation rate and recovery mechanism reductions should be subject to a “pause” at current levels until such time as universal service fund reforms are completed and implemented).