

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

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 VERIZON¹

The Commission should deny the Petition.² The Commission has thoroughly explained both why it included originating VoIP-PSTN³ access rates in the 2011 *Connect America Fund Order* intercarrier compensation (ICC) framework and how delaying rate reductions would encourage arbitrage and impede the migration to IP networks.⁴ The facts have not changed since the Commission overhauled the ICC and universal service fund (USF) programs more than three

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² See 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., Emergency Petition For Waiver, *Connect America Fund*, WC Docket No. 10-90; *et al.* (July 7, 2014) (“Petitioners” and “Petition”).

³ VoIP-PSTN traffic is traffic exchanged over PSTN facilities that originates and/or terminates in IP format.

⁴ *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“*Connect America Fund Order*”).

years ago. Yet Petitioners now ask the Commission to reverse course and to grant them a waiver of the rules that would reinstate old ICC rates for a subset of voice traffic. That makes no sense, especially now that the 10th Circuit has upheld, across the board, the Commission’s ICC and USF reforms – including critical efforts to harmonize and reduce rates for all traffic.⁵ Petitioners offer little justification to upset the careful balance and policy goals that underpin the *Connect America Fund Order*. And, at any rate, Petitioners present no new, special circumstances that would justify a waiver under Section 1.3 of the Commission’s rules.⁶

1. The *Connect America Fund Order* carefully balanced the need to give carriers time to adjust to the new regime while promoting the migration to modern IP networks.

In the *Connect America Fund Order* the Commission fundamentally transformed the ICC system. To encourage the transition to new IP networks, provide predictability for investors and the marketplace, and to take consumers out of the position of footing the bill for hidden subsidies, the Commission adopted a default bill-and-keep methodology for all ICC traffic. *See Connect America Fund Order* ¶ 736. And mindful of the need to avoid disrupting consumers and providers, the Commission adopted a transition period that reduced over time default ICC rates, eventually to bill-and-keep. *See id.* ¶ 798.

At the time, Petitioners supported much of the Commission’s plan, which was designed to “strike the right balance between our commitment to avoid flash cuts and enabling carriers sufficient time to adjust to marketplace changes and technological advancements, while furthering our overall goal of promoting a migration to modern IP networks.” *Id.* ¶ 802. The Commission expressly found that the transition periods “represent a careful balance of the interests of all stakeholders” and avoid unnecessary disruption. *Id.* ¶ 808; *see also id.* ¶ 810.

⁵ *In re FCC 11-161*, Case No. 11-9900, 2014 U.S. App. LEXIS 9637 (10th Cir. May 23, 2014) (“10th Circuit Decision”).

⁶ 47 CFR §1.3.

Nevertheless, Petitioners now ask the Commission to waive Section 51.913(a) of its rules⁷ and roll back originating access rates for originating intrastate PSTN-VoIP traffic to their June 30, 2014 levels. This would effectively revert rates for this traffic to their pre-*Connect America Fund Order* levels because originating VoIP rates were not reduced until 2014 under the Commission's modified ICC transition plan. Petitioners also ask the Commission to pause further rate reductions for this traffic until the Connect America Fund (CAF) Phase II mechanism is fully implemented, or for price-cap carriers until a tailored CAF mechanism is fully implemented. Claiming "special circumstances" that justify a waiver, the Petitioners assert -- without support -- that the timing of the ICC rate transition relied upon an assumption that the CAF programs would by now be operational.

The careful balance that the Commission struck in the *Connect America Fund Order* accommodated many different policy goals, but the Commission did not condition ICC reductions upon implementation of CAF mechanisms. The Commission specifically noted that it did not promise complete compensation for any lost revenue.⁸ *Id.* ¶¶ 881, 924. And, in any event, the Commission is poised to push forward on CAF programs before the next round of ICC reductions in July 2015.

This is the third time some of the Petitioners have asked for relief from originating VoIP-PSTN access rate reductions. They pursued this remedy and lost in the *Second Reconsideration Order*⁹ when they sought clarification that originating VoIP-PSTN traffic was excluded from the

⁷ 47 CFR §1.3.

⁸ *See also* Combined Responses of the Federal Respondents and Supporting Intervenors to the Windstream Brief, *In re FCC*, Case No. 11-9900, Doc. No. 01019099642 at 32 n.6 (10th Cir. July 29, 2013) ("*FCC Windstream Brief*").

⁹ *Connect America Fund, et al.*, Second Order on Reconsideration, 27 FCC Rcd 4648 (2012) ("*Second Reconsideration Order*").

Connect America Fund Order ICC framework. And they lost again in their appeal of the issue to the 10th Circuit. *10th Circuit Decision* at 101, 103-14. The Petitioners now argue that because CAF mechanisms have not fully been implemented, the Commission should delay further ICC reform. These are not special circumstances; these are circumstances already fully considered in the rulemaking.

2. The Commission already has determined that delaying originating VoIP-PSTN access reductions would undermine core policy goals and harm consumers.

The Petition if granted would increase arbitrage opportunities and delay the migration to new IP-based technologies, both to the detriment of consumers who would suffer the consequences.

The Commission explicitly included *all* VoIP-PSTN traffic – traffic exchanged over PSTN facilities that *originate or terminate* in IP format -- in the new *Connect America Fund Order* rate regime. See *Connect America Fund Order* ¶¶ 940, 943. The Commission confirmed this in the *Second Reconsideration Order*, where for other reasons the Commission delayed for two years the transition for originating VoIP-PSTN access rates to interstate levels. See *Second Reconsideration Order* ¶ 31. Windstream then appealed both this aspect of the *Connect America Fund Order* and the *Second Reconsideration Order* to the 10th Circuit, and the court denied the appeal. *10th Circuit Decision* at 101, 103-14.

Originating VoIP-PSTN access was an important component of rate transition and the balance the Commission had struck. Moving away from the flawed prior ICC regime was the fundamental policy goal of the ICC rate transition.” *Second Reconsideration Order* ¶ 35; see also *FCC Windstream Brief* at 13. Delaying that goal would disserve the policies behind that goal. *FCC Windstream Brief* at 13. The Commission already has found that indefinitely permitting an intrastate origination rate for VoIP-PSTN calls instead of the lower interstate rate -- precisely what the Petitioners once again ask the Commission to do – is unnecessary for the

rate transition and would conflict with and undermine the Commission’s core policy goals of “encouraging a migration to all IP networks and moving away from reliance on ICC revenues.” *Second Reconsideration Order* ¶ 35; *see also FCC Windstream Brief* at 13. Furthermore, the two-year transition the Commission adopted in the *Second Reconsideration Order* gave carriers “the opportunity to make significant progress transitioning their business plans away from extensive reliance” on access charges and to adjust to the new regulatory framework.” *Second Reconsideration Order* ¶ 36; *see also FCC Windstream Brief* at 14.

Whether and how the Commission permits additional lost revenue recovery for these reductions is a separate issue from the rate, which must be harmonized with other ICC rates for toll PSTN-VoIP traffic and reduced. Granting the waiver would harm consumers by perpetuating and expanding opportunities for arbitrage associated with asymmetric ICC rates for PSTN-VoIP. *See Connect America Fund Order* ¶ 942; *see also FCC Windstream Brief* at 25. And it would further harm consumers by impeding the migration to all IP networks, because it would preserve incentives to retain legacy voice technologies and associated high ICC rates and implicit subsidies instead of investing in IP-based broadband networks.¹⁰

3. Petitioners do not satisfy the Commission’s standard for a waiver because there are no special circumstances presented.

Petitioners make no serious effort to demonstrate that they have met the Commission’s two-pronged standard for waiver of the Commission’s rules under Section 1.3.¹¹ Waiver is appropriate only if special circumstances warrant a deviation from the general rule, and if such a

¹⁰ *See Connect America Fund, et al.*, Notice of Proposed Rulemaking, 26 FCC Rcd 4554, ¶ 495 (2011) (“2011 NPRM”). *See also FCC Windstream Brief* at 13-14.

¹¹ 47 CFR §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.”).

deviation will serve the public interest.¹² And the special circumstances must be beyond those considered during regular rulemaking.¹³ Here, nothing has changed since the Commission determined in the *Connect America Fund Order* and the *Second Reconsideration Order* that all ICC rates needed to be harmonized and reduced on a common schedule. Those decisions have, of course, affected certain parties such as Petitioners. But the consequences of the ICC rate changes were foreseen by the Commission three years ago and fully balanced in the *Connect America Fund Order* against competing policy considerations and other revenue opportunities for providers.

The Commission carefully considered during its rulemaking process whether to include originating VoIP-PSTN access in the new ICC regime at all, and it rejected both in the *Connect America Fund Order* and the *Second Reconsideration Order* claims that it should not do so. *Second Reconsideration Order* ¶ 31. The Commission provided a complete explanation of its consideration of the issue and its determination that *all* VoIP-PSTN traffic was included in the new compensation framework and that charges for *all* VoIP-PSTN traffic would be equal to interstate access rates – including charges for originating access. *See FCC Windstream Brief*, 19-29. It is equally clear that the Commission considered and declined to extend the two-year delay of the transition that it adopted in the *Second Reconsideration Order*. *See Second Reconsideration Order* ¶ 35. Petitioners have not – and cannot – meet the waiver standard.

Moreover, as the Commission has held, the Communications Act *requires* that the Commission eliminate all originating access charges – including those for VoIP-PSTN traffic –

¹² *See, e.g., In re Universal Serv. Contribution Methodology*, 27 FCC Rcd 11178 (2012), citing *NetworkIP, LLC v. FCC*, 548 F.3d 116 (D.C. Cir. 2008) and *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990)

¹³ *Northeast Cellular Tel. Co.*, 897 F.2d at 1166; *see also Industrial Broadcasting Co. v. FCC*, 437 F.2d 680 (D.C. Cir. 1970).

sooner rather than later because all PSTN traffic is now under the reciprocal compensation provisions of Section 251(b)(5), which does not allow for originating access charges on a permanent basis. *Connect America Fund* ¶ 961 n. 1976.

Conclusion

For these reasons, the Commission should deny the Petition.

Respectfully submitted,

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