

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

To: The Commission

COMMENTS OF CTIA–THE WIRELESS ASSOCIATION®

CTIA–The Wireless Association®¹ submits these comments in opposition to the petition submitted by NTCA–The Rural Broadband Association (“NTCA”) and certain incumbent local exchange carriers (“ILECs”) seeking retroactive waiver of the June 30, 2014 reduction of originating intrastate voice over Internet protocol (“VoIP”) access rates to interstate levels.² The

¹ CTIA – The Wireless Association® (“CTIA”) is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization includes Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

² Emergency Petition for Waiver of NTCA–The Rural Broadband Association *et al.*, WC Docket Nos. 10-90 *et al.* (filed July 7, 2014) (“Petition”). *See also Wireline Competition Bureau Seeks Comment on Petition for Waiver of Section 51.913(a) Regarding Reductions in Intercarrier*

June 30, 2014 rate reduction is a key element of the Commission’s important transition of all access rates to bill-and-keep. The Commission has concluded that the transition of VoIP access rates, in particular, is important to facilitating the deployment and adoption of Internet Protocol (“IP”) based services, reducing arbitrage and marketplace distortions, and promoting competition. The Commission’s previous findings remain true today. No special circumstances exist to support a waiver, and the public interest would not be served thereby. Therefore, for the reasons discussed below, the Petition should be denied.

I. NO SPECIAL CIRCUMSTANCES EXIST TO SUPPORT A WAIVER OF THE RULE

As the Petition acknowledges, the Commission will only grant a waiver for good cause, typically where special circumstances support a waiver.³ No special circumstances exist in this case.

The Petition suggests that a waiver should be granted because the Commission has not yet implemented Phase II of the Connect America Fund (“CAF”) for price cap carriers or a specific rate-of-return CAF mechanism, leaving ILECs with an “annual revenue shortfall” when the rate reduction is implemented.⁴ First, many of the same entities that signed the instant Petition made the same arguments in 2012, and the Commission explicitly rejected them in adopting the June 30, 2014 step-down date. Specifically, the Commission rejected arguments that the *Transformation Order* did not reduce originating access charges for VoIP traffic,⁵ and that the Commission would need to permit ILECs to apply the recovery mechanism to such

Compensation Rates for Originating Intrastate Toll Voice Over Internet Protocol Traffic, WC Docket Nos. 10-90 *et al.*, DA 14-1001 (rel. July 15, 2014) (“Public Notice”).

³ Petition at 4-5.

⁴ Petition at 2, 7.

⁵ *Connect America Fund, et al.*, WC Docket Nos. 10-90 *et al.*, Second Order on Reconsideration, 27 FCC Rcd 4648, 4659 ¶ 30 (2012) (“*Second Order on Reconsideration*”).

reductions if it did.⁶ Thus, the Commission has already determined that the reduction of intrastate VoIP access rates to interstate levels on June 30, 2014 does not represent a “flash cut” and that no universal service recovery is necessary to offset the rate reduction.

In fact, the Commission has never drawn any connection between the timing of implementation of CAF reform and the phase-down of access charges for VoIP traffic. The Petition points to none, arguing instead that a waiver is necessary to “maintain the careful balance that the Commission attempted to strike in the *Transformation Order*.”⁷ This is flatly inconsistent, however, with the text of the Commission’s decision adopting the rule. The Commission’s specific rationale in specifying the July 1, 2014 date for the transition of intrastate VoIP access rates to interstate rate levels was to give carriers “the opportunity to make significant progress transitioning their business plans away from extensive reliance on intercarrier compensation.”⁸ This rationale remains unchanged, and granting the Petition would undermine it.

In sum, the Commission allowed ILECs to apply their intrastate access rates to intrastate originating VoIP access charges between the effective date of the *Second Order on Reconsideration* and June 30, 2014 as a “transitional rate”⁹ that balanced the “benefit [to] some providers through a more measured transition away from reliance on intercarrier compensation” against the “burden [on] other providers that are required to bear these costs.”¹⁰ The Commission’s adoption of the June 30, 2014 transition date was not tied to the adoption of any

⁶ *Id.* at 4662 n.97.

⁷ Petition at 7.

⁸ *Second Order on Reconsideration*, 27 FCC Rcd at 4663 ¶ 36.

⁹ *Second Order on Reconsideration*, 27 FCC Rcd at 4662-63 ¶ 35.

¹⁰ *Id.* at 4663 ¶ 36.

specific universal service mechanism; in fact, the Commission specifically concluded that no recovery mechanism was appropriate.¹¹ Petitioners have had two years to transition their business plans away from reliance on access charges, and have made no showing that any relevant circumstances have changed since the last time these questions were asked and answered.

II. THE PUBLIC INTEREST WOULD BE DISSERVED BY WAIVING THE RULE

As the Petition also acknowledges, a waiver must be supported by a showing that the public interest would be served thereby.¹² A waiver would disserve the public interest by undermining the substantial public interest benefits of the transition of intercarrier compensation to bill-and-keep, and the specific benefits to the IP transition from this transition for VoIP access charges.

The access rate reduction in section 51.913(a) is part of the larger transition to bill-and-keep, which the Commission has found will have myriad beneficial effects on the telecommunications and information services market generally. The Commission found in the *Transformation Order* that “bill-and-keep gives carriers appropriate incentives to serve their customers efficiently” because “a bill-and-keep methodology requires carriers to recover the cost of their network through end-user charges, which are potentially subject to competition,” in contrast to the access charge regime, where “carriers recover the cost of their network from competing carriers through intercarrier charges, which may not be subject to competitive

¹¹ *Id.* at 4662 n.97. Consistent with the Commission’s intent that carriers should transition their business models towards recovery of costs from their own end users, CTIA has no objection to petitioners’ being permitted to recover these access reductions from their own end users (but *not* through universal service access replacement).

¹² Petition at 5.

discipline.”¹³ The Commission concluded that bill-and-keep is less burdensome than setting a particular rate,¹⁴ consistent with cost-causation principles,¹⁵ beneficial to consumers,¹⁶ and less prone to arbitrage and marketplace distortions.¹⁷ Further delaying the implementation of section 51.913(a) would postpone all of these benefits to the detriment of the public interest.

The Commission also specifically found that a transition to bill-and-keep for VoIP traffic is important to facilitate the transition to IP-enabled services.¹⁸ In adopting the June 31, 2014 step-down to interstate rates for originating VoIP traffic, the Commission concluded that “a measured transition with a time limit ... is necessary to ensure that migration to IP services is adequately promoted.”¹⁹ Delaying this rate reduction would undermine the IP transition and thereby disserve the public interest.

Finally, the Petition’s assertion that implementing the rate reduction for originating VoIP traffic will lead to arbitrage and disputes²⁰ ignores the Commission’s specific decision to provide a unique transition for VoIP intercarrier compensation.²¹ In fact, because section 51.913(a) moves originating VoIP access rates closer to other access rates, denying the waiver will reduce the potential for arbitrage and disputes.

¹³ *Connect America Fund, et al.*, 26 FCC Rcd 17663, 17906 ¶ 742 (2011), *aff’d sub nom In re: FCC 11-161*, No. 11-9900 (10th Cir. May 23, 2014) (“*Transformation Order*”).

¹⁴ *Id.* at 17906 ¶ 743.

¹⁵ *Id.* at 17907 ¶ 744.

¹⁶ *Id.* at 17909 ¶ 748.

¹⁷ *Id.* at 17911 ¶ 752.

¹⁸ *Second Order on Reconsideration*, 27 FCC Rcd at 4663 ¶ 36.

¹⁹ *Id.*

²⁰ Petition at 8.

²¹ *See, e.g., Second Order on Reconsideration*, 27 FCC Rcd at 4667 ¶¶ 41-42.

CONCLUSION

No good cause exists to grant a waiver of section 51.913(a) because there are no special circumstances supporting a deviation from the rule, and a waiver would disserve the public interest in intercarrier compensation reform and the transition to IP-based services. The Commission should therefore deny the Petition.

Respectfully submitted,

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