

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92

**PETITION FOR RECONSIDERATION AND/OR CLARIFICATION
OF THE UNITED STATES TELECOM ASSOCIATION
OF THE “REPORT AND ORDER” AND THE “ORDER”**

Pursuant to section 1.429 of the Commission’s rules,¹ the United States Telecom Association (“USTelecom”)² respectfully petitions the Commission to reconsider and/or clarify certain aspects of both its *Report and Order* and *Order*.³ With respect to the *Report and Order*, USTelecom requests clarification and/or reconsideration of the apparent application to price cap carriers of the rule eliminating support in incumbent local exchange carrier (ILEC) study areas

¹ 47 C.F.R. § 1.429.

² USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

³ See *In the Matter of Connect America Fund* (WC Docket No. 10-90), *Universal Service Reform – Mobility Fund* (WT Docket No. 10-208), *ETC Annual Reports and Certifications* (WC Docket No. 14-58), *Establishing Just and Reasonable Rates for Local Exchange Carriers* (WC Docket No. 07-135), *Developing an Unified Intercarrier Compensation Regime* (CC Docket No. 01-92), *Report and Order (“Report and Order”)*, *Declaratory Ruling, Order (“Order”)*, *Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking (“Notice”)* (rel. June 10, 2014).

where an unsubsidized competitor or combination of unsubsidized competitors offers voice and broadband that meet the Commission’s service obligation throughout the service area. With respect to the *Order*, USTelecom seeks reconsideration of the schedule for future urban rate surveys as well as whether carriers should be subject to support reductions for offering certain lower-priced services that may be currently included in the local rate floor offset but are actually not reasonably comparable to local service.

I. The Commission Should Clarify That Sec. 54.319 of Its Rules Does Not Apply to Areas in which Price Cap Carriers Receive High-Cost Support

The Commission should clarify that Sec. 54.319 of its rules,⁴ eliminating support in areas covered 100 percent by an unsubsidized competitor, does not apply to price cap areas. If this section is intended to apply to price cap carriers, the Commission should reconsider such application.

Price cap carriers received no notice of the potential application of this rule to them. The discussion of this issue in the *USF/ICC Transformation Order*⁵ both implied and clearly stated that, in the context of addressing areas with 100 percent coverage by an unsubsidized provider,

⁴ Sec. 54.319(a) mandates that “universal service support be eliminated in an incumbent local exchange carrier study area where a qualifying competitor, or a combination of qualifying competitors, as defined in section 54.5, offers to 100 percent of residential and business locations in the study area voice and broadband service at speeds of at least 10 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas.” Section 54.319 provides a schedule for the phase-out of support in such an area and 54.319(c) requires the Wireline Competition Bureau to update its analysis of where there is a 100 percent overlap on a biennial basis.

⁵ See *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 an 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 – Mobility Fund*, WT Docket No. 10-208, 26 FCC Rcd. 17663 (2011), (“*USF/ICC Transformation Order*”).

the Commission was speaking solely to rate-of-return carriers. The issue was addressed in section VII, D, 10 – titled respectively “Establishing the Connect America Fund,” *Universal Service Support for Rate-of-Return Carriers*,” “Elimination of Support in Areas with 100 percent Overlap.”⁶ More directly, paragraph 283 of the *USF/ICC Transformation Order* states “Accordingly, we adopt a rule to phase out all high-cost support received by *incumbent rate-of-return carriers*⁷ over three years in study areas where an unsubsidized competitor – or a combination of unsubsidized competitors – offers voice and broadband service...” Paragraph 54 of the *Report and Order* harkens back to the *USF/ICC Transformation Order* and states that “the Commission adopted a rule to eliminate support in ILEC study areas where an unsubsidized competitor or combination of unsubsidized competitors offer voice and broadband...” but does not echo the language of the *USF/ICC Transformation Order* specifying that the rule applies solely to areas served by rate-of-return carriers. Section “C” of the *Notice*⁸ addressing “Eligibility of Areas for Phase II Support,” paragraph 178 asks “For example, should the 100 percent overlaps rule apply only where unsubsidized competitors overlap an incumbent or also where any qualifying competitor overlaps the incumbent?” Similarly, the codification of this policy adopted in the *Report and Order* in section 54.319 does not specify that it applies only to rate-of-return carriers. The Commission should clarify that the rule does not apply to areas served by price cap carriers.

Moreover, it does not make sense to apply this rule to price cap carriers whose universal service high-cost support will be determined by the CAF Phase II mechanism. Census blocks within price cap carriers’ study areas will be determined to be served or unserved with voice and

⁶ See *USF/ICC Transformation Order* at ¶ 280. Emphasis added.

⁷ Emphasis added.

⁸ See *Notice* at ¶ 178.

broadband service based on the National Broadband Map and the completion of the challenge process. Once that determination is made, an offer will be extended to price cap carriers on a statewide basis as to whether to accept model-based support in exchange for promising to fulfill buildout and service obligations in the eligible census blocks. If the price cap carrier declines the statewide commitment, the eligible census blocks will be subject to competitive bidding, and the price cap carriers' frozen support will be adjusted to cover only those areas, unserved by an unsubsidized competitor, that are not covered by a winning competitive bid. Under both the statewide commitment and competitive bidding process, carriers will be accepting support for a set period of time in exchange for a set of obligations, and it would be inappropriate to adjust the terms of that arrangement midstream.

Further, neither the CAF II statewide offer to price cap carriers nor the accumulation of unserved census blocks included in that offer have any relevance to study areas or study area boundaries. As of now, study areas are only relevant to the calculation of support for rate-of-return carriers.

In short, Section 54.319(a) is not relevant to price cap areas and inconsistent with the reforms instituted therein, and the Commission should clarify that the rule does not apply to price cap carriers; or, if the *Report and Order* intended it to apply, the Commission should reconsider that decision and apply the rule solely to rate-of-return carriers.

II. The Commission Should Reconsider the Schedule for the Voice Pricing Data Collection Portion of the Urban Rate Survey

The very burdensome process of collecting voice pricing data through the Urban Rate Survey is unnecessary until the last year of the limitations on reduction in high-cost support due

to application of section 54.318(i) of the Commission's rules.⁹ It is not necessary to collect voice pricing data until it is needed to determine the local rate floor for the July 1, 2018, to June 30, 2019, which is the year following the final year when support reductions are limited according to the *Order*.¹⁰ Urban rate survey results are not needed and thus need not be announced until January of 2018 to facilitate the determination of a local rate floor for use July 1, 2018. The *Order* directed the Wireline Competition bureau to conduct the next survey in sufficient time to announce the results in early 2015 and to announce the 2016 rate floor no later than January 31, 2016. Presumably the Commission would have the Bureau conduct a voice urban rate survey in the fall of 2016 to develop a rate floor to be announced in January of 2017.

It is highly unlikely that rates will decline at all, or more than the \$.46 that is the amount above the \$20 support limitation.¹¹ The *Order* presents no data demonstrating any reduction in local rates on a year-over-year basis. There is certainly no reason to believe that the \$20.46 level will precipitously decline to \$16 or \$18 over the next two or three years, necessitating burdensome collection of voice urban rate survey data. (As a matter of fact, mere operation of the cap on support reductions due to the local rate floor implementation may serve to increase some urban rates included in the survey.) The Commission itself was comfortable with rates trending upward when it adopted the *USF/ICC Transformation Order* and set the local rate floor at \$10 and \$14 knowing that \$15.62 was the average monthly charge for local rate service and understanding that the urban rate survey would not be completed until the third year of the transition.¹² It evidenced no concern that rates would fall below \$14 in the interim. Yet

⁹ 47 C.F.R. 54.318(i).

¹⁰ See *Order* at ¶ 80.

¹¹ See Public Notice at p. 2, Wireline Competition Bureau Announces Results of Urban Rate Survey for Voice Services, WC Docket 10-90, DA 14-384, (rel. Mar. 20, 2014).

¹² See *USF/ICC Transformation Order* at ¶ 423.

paragraph 80 of the *Order* sets out the support limitations using dollar figures and a calculated annual rate floor -- “whichever is lower” -- implying the need for an annual rate survey to which to compare the support limitation amount.

The same logic applies to the lack of need to update the reasonable comparability benchmark in the interim period. Accepting the proposition that there is a minimal chance of the calculated rate floor going down, recalculation of the rate floor in the interim period would only serve to increase the level of the reasonable comparability benchmark. A higher reasonable comparability benchmark would negatively impact affordability of voice service.

Moreover, the local rate floor does not apply to CAF Phase II, and the Connect America Fund for rate-of-return carriers being developed by the Commission may or may not have a local rate floor support reduction component. For price cap companies, the local rate floor offset only applies to the portion of frozen support attributed to high cost loop support and high-cost model support.¹³ The burdensome collection of voice local rate floor data should be suspended until it is determined that such collection is necessary to administer the CAF, and certainly until no sooner than the fall of 2017 for announcement in January of 2018.

III. The Commission Should Reconsider Its Decision to Waive Application of Sec. 54.318(i) to Only Lifeline Customers

The Commission was correct to waive Sec. 54.318(i) for lines provided to customers enrolled in the Lifeline program, but should reconsider the restriction of this waiver to Lifeline lines to include “vacation lines” and “warm lines.” The support reduction due to rates below the local rate floor is intended to ensure that consumers are not contributing to the universal service

¹³ See § 54.318(d) “For purposes of this section, high-cost support is defined as the support available pursuant to Sec. 36.631 of this chapter and support provided to carriers that formerly received support pursuant to 54.309.”

fund to support customers whose rates are below a reasonable level for reasonably comparable services, but vacation lines and warm lines are not such services.

Vacation rates are charged to customers who will be away for a significant period of time but do not wish to disconnect and then reconnect service with the local telephone company. The service enables the customer to keep their phone number during their absence instead of disconnecting service, reconnecting upon their return, and having to obtain a new phone number. Also known as “absent subscriber service,” the subscriber pays less per month than for normal phone service which it clearly is not since there is no usage intended during the subscriber’s absence. Vacation rates are a convenience for customers, provide a revenue stream for carriers that would be absent if the customer decided to drop service entirely, and save the costs to the carrier and customer of disconnecting and reconnecting service. This service is valuable to customers and is clearly not reasonably comparable to local phone service and carriers should not be discouraged from offering it by penalizing them through support reductions.

“Warm line” service, also not comparable to local telephone service, has been mandated in several states as a public safety measure,¹⁴ so it is unfair to include warm line rates in determining rates that fall below the local rate floor for purposes of universal service high-cost support reductions. Warm lines refer to wireline service to residential customers which provides access to E9-1-1 service after disconnection for nonpayment or at subscriber’s voluntary request, and for newly installed lines where active telephone service has not been established. So by

¹⁴For example, California Public Utilities Code § 2883 specifies the statutory obligation of local exchange carriers to provide access to 9-1-1 in two types of situations: (a) in previously occupied or currently occupied residential units where normal voice service has been discontinued voluntarily by the customer or involuntarily by the carrier (e.g., for failure to pay the bill); and (b) in new residential units where normal voice service previously has not been available. In California, Warm Lines are identified in Statewide 9-1-1 call records as “Quick Dial Tone” (QDT) for AT&T’s warm lines and “Express Dial Tone No Call Back” for Verizon’s warm lines.

definition, warm lines are not local telephone service and rates for warm lines should not be included in determining support reductions since warm line service is not reasonable comparable to local telephone service.

IV. Conclusion

The Commission should promptly clarify and/or reconsider the apparent application to price cap carriers of the rule eliminating support in incumbent local exchange carrier (ILEC) study areas where an unsubsidized competitor or combination of unsubsidized competitors offers voice and broadband that meet the Commission's service obligation throughout the service area. With respect to the *Order*, the Commission should reconsider the schedule for future urban rate surveys as well as whether carriers should be subject to support reductions for offering certain lower-priced services that may be captured by the local rate floor but are actually not reasonably comparable to local service.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



By: _____

David Cohen
Jonathan Banks

Its Attorneys

607 14th Street, NW, Suite 400
Washington, D.C. 20005
202-326-7300

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