

**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 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 Reform – Mobility Fund)	WT Docket No. 10-208

**REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION,
THE NATIONAL EXCHANGE CARRIER ASSOCIATION,
ITTA – THE VOICE OF MIDSIZE COMMUNICATIONS COMPANIES,
THE EASTERN RURAL TELECOM ASSOCIATION,
WTA–ADVOCATES FOR RURAL BROADBAND,
FRONTIER COMMUNICATIONS CORPORATION, AND
WINDSTREAM COMMUNICATIONS, INC.**

NTCA–The Rural Broadband Association (“NTCA”), the National Exchange Carrier Association (“NECA”), ITTA – The Voice of Midsize Communications Companies, the Eastern Rural Telecom Association (“ERTA”), WTA–Advocates for Rural Broadband, Frontier Communications Corporation, and Windstream Communications, Inc. (collectively

“Petitioners”) hereby submit these reply comments in response to comments¹ filed regarding Petitioners’ emergency petition for waiver filed on July 7, 2014 (the “Petition”).

Petitioners requested that the Commission waive 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”) traffic² 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 rural, rate of return-regulated carriers (“RLECs”), respectively.³ The Petitioners noted that while such rate reductions were effective on July 1, 2014, for the reasons set forth in their Petition and reiterated herein, the applicable rates should be restored to their levels as of June 30, 2014 as soon as possible and remain at such levels until after the implementation of CAF Phase II and an RLEC CAF, respectively. Petitioners specifically noted the absence of any recovery mechanism associated with such rate step-downs, and that the Commission’s expectation that additional universal service support would be in place to help address associated ICC revenue losses has not yet materialized.

¹ Wireline Competition Bureau Seeks Comment on Petition for Waiver of Section 51.903(a) Regarding Reductions in Intercarrier Compensation Rates for Originating Intrastate Toll Voice Over Internet Protocol Traffic, DA 14-1001, WC Docket Nos. 03-109, 05-337, 07-135, 10-90, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Public Notice, DA 14-1001, (rel. Jul. 15, 2014).

² This traffic is also referred to in Section 51.913(a) of the Commission’s rules as “intrastate originating Access Reciprocal Compensation . . . exchanged between a local exchange carrier and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format.” *See* 47 C.F.R. § 51.913(a)(2).

³ More specifically, the “pause” in these rate reductions should occur on separate tracks. Thus, RLECs’ rates for originating intrastate toll VoIP traffic should remain at June 30, 2014 levels until adoption and full implementation of a CAF mechanism specifically designed for the unique needs of these carriers. Price cap carriers’ rates for originating intrastate toll VoIP traffic should remain at June 30, 2014 levels until full implementation of the CAF Phase II mechanism in the form of an extension of potential model-based support to such carriers.

Both prongs of the Commission’s waiver standard contained in section 1.3 of its rules⁴ are met in this instance. Specifically, special circumstances exist that warrant grant of a waiver, and grant of such a waiver is in the public interest. Petitioners also demonstrate that those few commenters opposing the emergency Petition mischaracterize both the nature of the request and the balance struck by the Commission in adopting the *2011 USF/ICC Order*⁵ and the *Second Order on Reconsideration* adopted in 2012.⁶ These objections to the Petition should therefore be dismissed.

Commenters opposing the Petition mischaracterize or misunderstand it in several respects. Contrary to the implication made by Verizon, Petitioners in no way assert that the link between the ICC rate transition adopted by the *2011 USF/ICC Order* and the expected but still-delayed creation of CAF Phase II and an RLEC CAF mechanism was part of a “promise [of] *complete* compensation for any lost revenue.”⁷ Rather, as Petitioners demonstrated in their Petition, the Commission was mindful while crafting the *2011 USF/ICC Order* that successful

⁴ 47 C.F.R. § 1.3.

⁵ *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 – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) (“*2011 USF/ICC Order*”).

⁶ *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 – Mobility Fund*, WT Docket No. 10-208, Second Order on Reconsideration (rel. Apr. 25, 2012) (“*Second Order on Reconsideration*”).

⁷ Comments of Verizon, WC Docket No., 10-90, *et al.* (fil. Aug. 4, 2013), p. 3 (emphasis added).

reform of ICC and the high-cost universal service program were inseparably linked. As noted in the Petition, the ICC rate transition adopted in the *2011 USF/ICC Order* was based on two interconnected ideas: one, that the multi-year transition of ICC would give carriers “the opportunity to make significant progress transitioning their business plans away from excessive reliance on intercarrier compensation”⁸ and two, that ICC mechanisms and high cost universal service mechanisms “have long been intertwined,”⁹ such that “[t]he CAF will also help facilitate [the Commission’s] ICC reforms.”¹⁰ In other words, the Commission was mindful that successful reform of ICC was “intertwined” with reforms to the high cost universal service programs. Where one aspect of that carefully constructed equation has failed to keep pace, recalibration to put them both back on comparable tracks is entirely justified.¹¹

Level 3 also misses the mark in arguing that the decision to permit LECs to tariff originating VoIP traffic in the *Second Reconsideration Order* was “never based on the existence

⁸ *Second Order on Reconsideration*, ¶ 36.

⁹ *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, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (“*2011 NPRM*”), ¶ 45.

¹⁰ *2011 USF/ICC Order*, ¶ 20.

¹¹ *See also*, *2011 NPRM*, ¶ 45 (“Intercarrier compensation and universal service have long been intertwined. Historically, both universal service policies and intercarrier compensation policies worked in tandem to enable companies to provide affordable local phone service to residential consumers – which in some areas requires recovery of network costs from sources other than those residential end-user customers.”) and ¶ 492 (“We seek comment on how to reform intercarrier compensation and universal service in tandem so [high-cost, insular, and Tribal] areas receive any ongoing support necessary to ensure that they continue to receive quality and affordable services, and to ensure that providers serving those areas can continue to advance connectivity where it lags far behind the rest of the nation.”).

or development of any other revenues source”¹² or “never meant to function as a stop gap until some other revenue recovery mechanism was put into place.”¹³ The Commission in the *Second Order on Reconsideration* could not have anticipated that essential CAF programs – which it had stated just six months earlier would be in place by early 2013¹⁴ – would still not be in place more than two years later. Thus, circumstances have changed considerably in the intervening two years since the *Second Order on Reconsideration* was adopted, such that grant of the instant waiver is merited.

Others mischaracterize the Petition as a call for “indefinitely permitting an intrastate origination rate for VoIP-PSTN calls.”¹⁵ Petitioners merely assert that the intrastate origination rate for VoIP-PSTN should continue only until the CAF Phase II mechanism and the RLEC CAF are implemented. Indeed, in a further notice of proposed rulemaking on which comments were recently submitted, the Commission concluded that it should proceed to establish a RLEC CAF mechanism¹⁶ and anticipated that CAF Phase II offers of support would be made in 2014.¹⁷ As

¹² Comments of Level 3, WC Docket No., 10-90, *et al.* (fil. Aug. 4, 2013), p. 3.

¹³ *Id.*, p. 7.

¹⁴ *2011 USF/ICC Order*, ¶ 157.

¹⁵ Verizon, p. 4. *See also*, Comments of AT&T, WC Docket No., 10-90, *et al.* (fil. Aug. 4, 2013), p. 4; Comments of Sprint, WC Docket No., 10-90, *et al.* (fil. Aug. 4, 2013), p. 3; Level 3, p. 8.

¹⁶ *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 a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54 (rel. June 10, 2014), ¶¶ 267-275.

¹⁷ *Id.*, ¶ 214.

the Commission appears to be marching much closer to the implementation of such mechanisms, the pause requested by the Petition can hardly be called indefinite.

Level 3 also incorrectly characterizes the Petition as an attempt to re-litigate the issue of whether lost revenues should be included in the recovery mechanism.¹⁸ To the contrary, the Petition simply notes that the July 1, 2014 rate reduction was contrary to the Commission's oft-stated "no flash-cuts" policy, and that the revenues at issue are significant, particularly (as the 2011 NPRM highlighted) in terms of carriers' ability to continue providing "quality and affordable services" in high-cost rural areas.¹⁹ As noted above, when the Commission declined to adopt a recovery mechanism for such lost revenues in 2011 and 2012, it was under the impression that the CAF mechanisms would be fully operational by now. As they are not, changed circumstances warrant grant of the Petition.

¹⁸ Level 3, pp. 5-7.

¹⁹ See, the Washington Independent Telecommunications Association, Colorado Telecommunications Association, Montana Independent Telecommunications System, LLC, Oregon Telecommunications Association, Oklahoma Telephone Association, Iowa Communications Alliance, Wisconsin State Telecommunications Association and Nevada Telecommunications Association (not including AT&T and CenturyLink) ("Western Associations") WC Docket No. 10-90, *et al.* (fil. Aug. 4, 2014), p. 6 (noting the significant lost ICC revenue at issue). This concern is particularly significant to the extent that interexchange carriers report astonishingly large (and effectively unverifiable) "originating VoIP" factors that threaten to seriously undercut, if not eliminate, most originating intrastate access revenues. As noted in the Petition, the estimated annual revenue shortfall for RLECs would exceed \$18.5 million. For Frontier Communications and Windstream Communications, the estimated annual revenue shortfall for these two price cap carriers alone would be \$14.5 million. Petition, p. 7. These estimates assume that calls originating on LEC networks to VoIP customers within the same state tracked to FCC monitoring data showing that approximately 30 percent of voice connections are at this point VoIP in nature. See, Federal Communications Commission, Local Telephone Competition: Status as of December 31, 2012, Industry Analysis and Technology Division, Wireline Competition Bureau, November 2013, Figure 2, p. 3.

A number of parties commenting on the Petition strongly support grant of the waiver. Both the Western Associations and GVNW state²⁰ that Petitioners have demonstrated good cause to grant the waiver. Comptel and the National Cable & Telecommunications Association support temporary suspension of the rate reductions and reinstatement of the rates as of June 30, 2014 if it is equally applicable to all other telecommunications carriers.²¹ Petitioners agree that general application of the requested waiver makes sense as a matter of public policy.

Others recognize that adjustments must be made to the access recovery mechanism in light of the delayed CAF implementation. The United States Telecom Association (“US Telecom”) recognizes that “the Commission carefully balanced the ICC transition and new universal service mechanisms, including an access recovery mechanism to address the disruption caused by the transition of access charges to bill-and-keep.”²² Accordingly, USTelecom recommends that the Commission devise and implement a recovery mechanism for originating VoIP access revenues lost due to the change to interstate rates.²³ While this proposed solution falls short of a rate pause, the implementation of such a recovery mechanism is in line with the Commission’s policy against “flash cuts” and would enable rural carriers to better provide service to high-cost rural America.

²⁰ Comments of GVNW, WC Docket No. 10-90, *et al.* (fil. Aug. 4, 2014), p. 6; Western Associations, p. 3.

²¹ Comments of National Cable & Telecommunications Association, WC Docket No. 10-90, *et al.* (fil. Aug. 4, 2014), p. 3; Comments of Comptel, WC Docket No. 10-90, *et al.* (fil. Aug. 4, 2014), p. 3.

²² Comments of the United States Telecom Association, WC Docket No. 10-90, *et al.* (fil. Aug. 4, 2014), p. 2.

²³ *Id.*, p. 3.

In sum, Petitioners have demonstrated that special circumstances required by rule 1.3 exist such that grant of the Petition is warranted. As explained in the Petition, the public interest would be served by grant of the requested waiver, as the substantial revenue losses as a result of the transition to interstate rates for the traffic at issue will not be offset via the CAF ICC mechanism. Petitioners therefore urge the Commission to grant the requested relief without delay.

Respectfully Submitted,

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