

**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 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
)	

**PETITION FOR CLARIFICATION OF THE
INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE, NATIONAL
EXCHANGE CARRIER ASSOCIATION,
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION,
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES, AND
WESTERN TELECOMMUNICATIONS ALLIANCE**

To the Commission:

The Independent Telephone and Telecommunications Alliance, National Exchange Carrier Association, National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance (collectively, the Petitioners) hereby petition the Commission pursuant to 47 C.F.R. § 1.106 for clarification of recently adopted rules. In support thereof, the following is shown:

I. INTRODUCTION

On November 18, 2011, the Commission adopted an Order prescribing new regulations addressing the Universal Service Fund (USF) and intercarrier compensation.¹ Appendix A of the Order sets forth the adopted rules, which include regulations relating to a new "local urban rate floor"² that carriers must meet in order to obtain high-cost support. It is not clear, however, whether the rules permit carriers sufficient time to implement rate changes that would enable the carriers' eligibility for high-cost loop support (HCLS). In brief, the rules could be read to imply that new governing rates were to have been effective January 1, 2012 – only 2 days after the Order became effective³ – and that any steps taken by carriers thereafter to increase rates to maintain unreduced levels of HCLS for the twelve months beginning July 1, 2012 are already moot. Such an interpretation of the rules would conflict with any notion of reasonableness, numerous state regulations, internal carrier corporate requirements, and indeed the very purpose stated by the Commission in adopting the "rate floor." Thus, the instant Petition has been filed to ensure proper clarification of the rules can be obtained prior to carriers undertaking the substantial efforts required to increase local rates.

II. DISCUSSION

New Commission Rule 54.318(a) provides,

Beginning July 1, 2012, each carrier receiving high-cost support in a study area under this subpart will receive the full amount of high-cost support it otherwise would be entitled to receive if its flat rate for residential local service plus state regulated fees as defined in paragraph (e) of this section exceeds a local urban rate floor . . .⁴

¹ *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime: Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, FCC 11-161 (2011) (Order).

² 47 C.F.R. § 54.318(a).

³ 73 Fed Reg 73830 (2011).

⁴ 47 C.F.R. § 54.318(a).

Rule 54.313(h), however, sets forth annual reporting requirements for high-cost recipients, and provides, "All incumbent local exchange carrier recipients of high-cost support must report all of their flat rates for residential local service . . . Carriers shall report lines and rates in effect as of January 1."⁵

Section 54.318(a) appears on its face to provide that a carrier will only suffer a reduction in HCLS if, after July 1, 2012, its local rates (as defined therein) are equal to or less than the "local urban rate floor." (Indeed, Section 54.318(a) could be read to mean that, not only would no reduction apply if rates were above the floor as of that date, but also that rates increased *after* July 1, 2012, would result in a carrier receiving the full amount of HCLS to which it was entitled rather than the reduced amount.) And, yet, when held up against Section 54.313(h), the rules could be read to imply that the determination of eligibility for support in July 2012 will hinge upon rates that were in effect as of January 1, 2012 (and reported as of April 1, 2012). For several reasons as discussed herein, this alternative reading would be untenable and unreasonable. Therefore, the Petitioners seek clarification of the rules to determine the parameters within which rate changes can be effected after January 1, 2012, but in a manner that enables support eligibility as of July 1, 2012.

In the first instance, it would defy logic and reasonable rulemaking to expect any ratemaking process to occur within a single business day. The Petitioners presume that the Commission did not intend this result, and that the reference to the rates in effect as of January 1, 2012 for purposes of the April 1 reporting requirement was merely a date chosen for purposes of standardization of reporting moving forward. The Petitioners therefore request clarification of the result that arises from the conjunctive reading of the new rules.

Moreover, and equally important, is the actual impossibility of implementing such rate changes in a manner consistent with state regulations. This process is not one that could be achieved in a single business day or even a month in some cases. Although the Petitioners have not completed a formal survey of all 50 states, the collective experience of the Petitioners' members and associated professionals, as well as a sample review of state regulations, reveals that ratemaking generally must be timed to

⁵ *Id.* at § 54.313(h).

conform to governing state regulations – and that these regulations do not allow carriers to raise rates quickly and easily. By way of example, the Petitioners provide the following:

Iowa

Rate increases require notice to the Iowa Board of Utilities and 30 days notice to the end-user.⁶

Minnesota

Rate-of-return carriers with fewer than 30,000 lines can petition for rates to be effective within 30 days, while non-rate-of-return regulated companies can amend rates on 60 days notice.⁷ However, common practice for rate-of-return companies contemplates a 45-day process, and non-rate-of-return amendments are commonly subject to a 75-day process.

Texas

Rates can be increased only with notice to the consumer and a 10-day filing period with the state commission. Rates can be increased 50 percent in a 12 month period, but the commission process is subject to consumer participation that could affect a company's ability to implement desired changes.⁸

Washington

The process for increasing local rates can take up to ten months after a filing is suspended (essentially eleven months from the date of filing) until the Washington Utilities and Transportation Commission to issue an order.⁹ Under the state commission's rules, if the Commission determines that it will follow its normal ratemaking process, carriers must provide substantial information, including full financial support for the increase in rates.¹⁰

Wisconsin

Although tariffs are effective when filed,¹¹ local regulations mandate a 25-day subscriber notice period.¹² Since most rural local exchange carriers (RLECs) bill once per month, this notice requirement generally expands to approximately 30 days. Moreover, the

⁶ Iowa Code § 476.97 (2009).

⁷ See, Minnesota Stat. §§ 237.01, 237.075 (2009).

⁸ Texas HB 2680 (2011), *amending* Texas Utilities Code § 53.304.

⁹ See, Wash. Rev. Code § 80.04.130(1) (2008).

¹⁰ See, Wash. Admin. Code § 480-07-510 (2008).

¹¹ 2009-10 Wis. Stat. Chap. 196.91(d)(1).

¹² WI Dept. Agriculture, Trade, Consumer Protection Administration Rule 123.04(1).

Petitioners have also been informed by representatives of Wisconsin carriers that compliance with the subscriber notice obligation requires provision of the appropriate language several days before a closing deadline; for carriers billing at the 30th day of the month, billing messages would typically be established by the 20th day of the month. In sum, the marriage of local regulations to typical billing processes contemplates at least 35-days *after* an internal RLEC rate decision has been made.

These examples evidence the impossibility of a January 1, 2012, effective date for Section 54.313(h).

In addition to the various state standards described above, the implementation of rate changes must conform to corporate or cooperative policies, which may include internal notice and other policies that cannot be commenced and completed within a single day. Even if the ministerial and state regulatory bridges could be crossed in one business day, the processes of corporate practices or cooperative by-laws, or both, would likely preclude such fundamental action on such short notice.

An interpretation of the rules that holds fast to a January 1 deadline for compliance with the “rate floor” contradicts the very purpose for which the rule was adopted. The rule was presumably *not* adopted to penalize carriers for failing to increase local rates six months in advance of the date by which those rates matter. Rather, the rule was adopted because the Commission found it “inappropriate to provide federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability.”¹³ In other words, the intent was to encourage carriers to increase local rates to the level of the rate floor so that HCLS payments would be more equitably distributed among all recipients, rather than “over-subsidizing” in the Commission’s view some who maintained “significantly lower” rates. But, if the rates for purposes of this rule were considered “locked in” as of January 1, 2012, then this does nothing to achieve the policy objective of consumer equity, nor does it do anything to encourage carriers to rationalize their rates – it simply penalizes carriers who might otherwise have taken steps between the effective date of the Order and June 30, 2012 (or thereafter) to increase their rates.

Finally, state regulations and other factors can operate to delay rate changes for various reasons, and may also in some instances occur in subsequent years after the January 1 date. Therefore, the

¹³ Order at ¶ 237.

Commission should, as it clarifies the relationship between Federal and state rate filing requirements, as well as internal carrier requirements, also clarify the process whereby LECs could implement a rate increase *after* July 1 in any given year, file an amended report pursuant to Section 54.313, and then “requalify” for full support thereafter for the remainder of that 12-month period. This, too, would be consistent with the Commission’s intent when adopting the new rules, as discussed above.

WHEREFORE the reasons set forth above, the Petitioners request clarification of this matter so that those implicated carriers who desire to do so may undertake lawfully the processes necessary to ensure full eligibility for high-cost support as of and after July 1, 2012, and continue their respective efforts to deploy and operate broadband-capable networks across the Nation.

Respectfully submitted,

s/Micah Caldwell

Micah Caldwell
Vice-President, Regulatory Affairs
Independent Telephone &
Telecommunications Alliance
1101 Vermont Avenue, NW, Suite 501
Washington, DC 20005
202/898-1520

s/Richard Askoff

Richard A. Askoff
National Exchange Carrier Association
80 South Jefferson Road
Whippany, NJ 07981
973/884-8000

s/Michael Romano

Michael Romano
Senior Vice President – Policy
National Telecommunications
Cooperative Association
4121 Wilson Blvd., 10th Floor
Arlington, VA 22203
703/351-2000

s/Stuart Polikoff

Stuart Polikoff
Vice President – Regulatory Policy and
Business Development
Organization for the Promotion and
Advancement of Small Telecommunications
Companies
2020 K Street, NW, 7th Floor
Washington, DC 20006
202/659-5900

s/Derrick Owens

Derrick Owens
Western Telecommunications Alliance
Director of Government Affairs
317 Massachusetts Avenue, N.E., Suite 300C
Washington, DC 20002
202/548-0202

s/Gerard J. Duffy

Gerard J. Duffy
Blooston, Mordkofsky, Dickens, Duffy
& Pendergast
Regulatory Counsel for
Western Telecommunications Alliance
2120 L Street, NW, Suite 300
Washington, DC 20037
202/659-0830