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
OF THE
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES; and
WESTERN TELECOMMUNICATIONS ALLIANCE
TO
OPPOSITIONS TO PETITION FOR RECONSIDERATION

February 21, 2012

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I. INTRODUCTION AND SUMMARY

On December 29, 2011, the National Exchange Carrier Association, Inc. ("NECA"), the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") and the Western Telecommunications Alliance ("WTA") (collectively, the "Associations") filed a petition for reconsideration

("PFR") of certain aspects of the Commission's November 18, 2011 *Order*[1] in the above-captioned proceeding.[2]

Among other things, the Associations' PFR requested the Commission reconsider its decision to impose new broadband-related performance mandates on rate-of-return regulated rural local exchange carriers ("RLECs") without also providing a sufficient and predictable mechanism under the new Connect America Fund ("CAF") to cover the costs of such mandates.[3] The Associations also objected to the process the Commission is using to represcribe the authorized interstate rate of return, and several issues associated with implementation of intercarrier compensation ("ICC") reform.[4]

Parties opposing the Associations' PFR argue in broad terms that the Commission should not "revisit" decisions imposing caps and limitations on RLEC support funds.[5] Wireless carriers generally oppose the Associations' requests for reconsideration and/or clarification of rules governing application of access charges during the planned

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[1] *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, FCC 11-161 (rel. Nov. 18, 2011) (*Order*).

[2] Petition for Reconsideration and Clarification of NECA, OPASTCO and WTA, WC Docket No. 10-90, *et al.* (filed Dec. 29, 2011) (*Association PFR*).

[3] The Associations' PFR also requested reconsideration of Commission decisions imposing various new caps and limitations on current RLEC Universal Service Fund ("USF") cost recovery mechanisms; imposition of new annual reporting requirements on RLECs; and adoption of new, unreasonably strict standards for obtaining waivers of such limitations. *Id.* at 9-13, 19-21, 22-25.

[4] *Id.* at 26-39.

[5] *E.g.*, Opposition of Verizon, WC Docket No. 10-90, *et al.,* at 4-5 (filed Feb. 9, 2012) (*Verizon Opposition*); Comments of the National Cable & Telecommunications Association, WC Docket No. 10-90, *et al.,* at 4-8 (filed Feb. 9, 2012) (*NCTA Comments*).

transition to a bill-and-keep ("B&K") regime. For the reasons explained below, the Commission should disregard these objections and grant the relief requested. Reconsideration at this stage will avoid severe impacts to rural consumers living in RLEC service areas, resolve numerous ICC billing disputes likely to arise during the planned ICC rate transition (and indeed are already arising), and significantly improve prospects of accomplishing the goals of the Commission's National Broadband Plan.

II. COMMISSION DECISIONS LIMITING THE OVERALL CAF "BUDGET" TO CURRENT LEVELS AND IMPOSING SEVERE SUPPORT REDUCTIONS ON INDIVIDUAL RLECs, WHILE IMPOSING ADDITIONAL PERFORMANCE OBLIGATIONS FOR BROADBAND, SHOULD BE RECONSIDERED.

The Associations' PFR asked the Commission to reconsider a number of decisions relating to USF high-cost support payments. These include its decisions to: (i) impose caps on high-cost support payments to RLECs, (ii) conduct a truncated rate-of-return represcription proceeding, and (iii) otherwise limit the ability of RLECs to receive sufficient cost recovery for providing service to rural and high-cost areas of the country, among other things.[6]

Verizon, CTIA and NCTA, among others, generally urge the Commission not to change the thrust and direction of its modified rules in any way that would provide more support to RLECs. For instance, Verizon argues that the Commission should not change the "budget" it established for RLEC universal service payments.[7] NCTA also argues

[6] *Association PFR* at 2-28. The Rural Associations have described the benefit of these proposals in more detail in their April 2011 Comments. *See* Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90, *et al*. (filed Apr. 18, 2011).

[7] *Verizon Opposition* at 4. *See also NCTA Comments* at 4.

that the Commission should not "water down" the waiver process.[8] The Commission should reject these non-specific arguments because they are not based on any useful analysis or facts.

The Associations' PFR provided detailed reasons why the Commission should reconsider these aspects of the *Order*. Prior comments and reply comments submitted by the Associations in this proceeding, augmented by a rapidly-expanding library of data submitted since the *Order* was released,[9] make abundantly clear that limiting RLECs' USF support to artificially low, arbitrary levels will harm consumers, impede future progress in RLEC broadband deployment and threaten existing service levels. The record also confirms that, even if the current "budget" were reasonable or realistic to achieve the vision of the National Broadband Plan (which it is not), *adding* new mandates for RLECs while *reducing* RLEC support[10] and failing to provide any broadband-specific funding mechanisms for RLECs will only cause further harm to rural consumers.

Parties opposing the Associations' PFR simply repeat the talisman that RLEC funding levels should be cut, untethered from any analysis on whether additional funds

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[8] *NCTA Comments* at 10.

[9] *See, e.g.,* Letter from Caressa D. Bennet, Law Offices of Bennet & Bennet, PLLC (on behalf of Central Texas Telephone Cooperative), to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed Jan. 9, 2012); Letter from Curtis Eldred (on behalf of Rural Iowa Independent Telephone Association), to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed Jan. 26, 2012); Letter from Thomas J. Navin, Wiley Rein LLP, (on behalf of Big Bend Telephone), to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed Feb. 10, 2012); Petition of Allband Communications Cooperative For Waiver of Part 54.302 and the Framework to Limit Reimbursable Capital and Operating Costs, WC Docket No. 10-90, *et al.* (filed Feb. 3, 2012).

[10] The *Order* establishes an annual budget target for high-cost support for RoR carrier service areas at $2 billion through 2017, which is approximately equal to support levels for these carriers in FY2011. However, because that amount must now also accommodate recovery for ICC reform under which all rates will eventually transition to $0, the fixed $2 billion budget target will result in increasingly lower combined revenues from high-cost support and ICC.

are in fact needed. Opponents also present vague arguments that additional reporting obligations and stringent waiver requirements are "fair" and "justified," again without addressing the specific concerns raised by the Associations in their PFR and elsewhere in these proceedings.

The Associations agree that reasonable objectives for overall USF high-cost support, together with well-defined and reasonably developed limits on recovery of *prospectively-incurred* capital and operating costs, could be an appropriate component of USF policy. The Associations accordingly submitted such proposals as part of the RLEC Plan. Likewise, reasonable reporting requirements can be beneficial in ensuring both USF recipients and the Commission meet their public interest obligations.[11] But as the Associations' PFR and the overall record demonstrate, the draconian approaches taken in the Order are unjustified and harmful. The Associations accordingly urge the Commission to reconsider these aspects of the *Order* as described in the PFR, and to adopt instead the RLEC Plan as the CAF mechanism for rate-of-return carriers.

III. THE COMMISSION SHOULD RECONSIDER OR CLARIFY RULES GOVERNING THE APPLICATION OF ACCESS CHARGES DURING THE TRANSITION TO BILL-AND-KEEP.

A. The Commission Should Grant the Associations' Request for Clarification of Rules Governing Originating Intrastate Access Charges for VoIP Traffic.

The *Order* prospectively adopts a rule that the default compensation rate for "toll" traffic exchanged between providers of Voice over Internet Protocol ("VoIP") services

[11] The Associations note in this regard AT&T's *Comments* in this proceeding, which argue, among other things, that the Commission's new high-cost reporting requirements as adopted violate the Administrative Procedure Act and the Paperwork Reduction Act, and are unnecessarily burdensome. Comments of AT&T, WC Docket No. 10-90, *et al.*, at 9 (filed Feb. 9, 2012) (*AT&T Comments*).

and the public switched telephone network ("PSTN") ("VoIP-PSTN traffic") will be a carrier's interstate access rate, while applicable reciprocal compensation rates apply to other VoIP-PSTN traffic.[12] The Associations' PFR requested clarification that RLECs are permitted to continue to apply intrastate originating access charges when signaling data indicates such charges should be applied because there is no way to determine whether an intrastate toll call terminates to a VoIP customer.[13]

A number of carriers, most notably Verizon, object to this requested clarification, claiming the *Order* makes clear interstate access charge rates and structure apply to both originating and terminating VoIP-PSTN calls.[14] But as Windstream/Frontier explain in their petition for reconsideration, the Commission intended to limit reforms at this time to terminating access charges and further evaluate other charges, including originating charges, at a later date.[15] The Associations' PFR, as well as that of Windstream/Frontier, also point out the Commission has done nothing to establish a recovery mechanism for lost revenues associated with reduced originating charges, a circumstance which violates other principles adopted in the Order.[16]

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[12] *Order* ¶ 944.

[13] *Association PFR* at 34-36

[14] *Verizon Opposition* at 7-11; *See also* Comments of Comcast, WC Docket No. 10-90, *et al.,* at 8-9 (filed Feb. 9, 2012).

[15] Petition for Reconsideration and/or Clarification of Windstream Communications & Frontier Communications, WC Docket No. 10-90, *et al.* at 27 (filed Dec. 29, 2011) (*Windstream/Frontier PFR*). These carriers make the alternative argument that the Commission did not establish a rule for originating intrastate VoIP-PSTN toll calls. *Id.* *See also Association PFR* at 34.

[16] *Association PFR* at 34; *Windstream/Frontier PFR* at 28.

B. The Commission Should Confirm that RLECs May Bill Terminating Access Charges to Intra-MTA Calls Delivered over IXC Facilities.

The Associations' PFR asks the Commission to confirm that access charges apply to all calls delivered over interexchange carrier ("IXC") facilities, regardless of potential application of the intra-MTA rule.[17] A number of wireless carriers oppose this request, arguing the intra-MTA rule should continue to be applied.[18]

Opposing carriers fail to address the Associations' substantive concerns. Wireless carriers often choose affirmatively to deliver calls through an IXC, rather than establish direct connections to RLEC facilities, in order to reduce their costs. Such a unilateral decision allows multiple types of calls, such as local, intrastate, and interstate, to be aggregated on a single IXC trunk. RLECs normally bill traffic in accordance with the nature of the trunks on which the traffic is delivered. Decisions by wireless carriers to utilize IXCs to terminate calls may make economic sense in situations where traffic loads do not justify the costs of direct interconnection. But economic decisions should be made based upon the underlying cost of the options presented, rather than a regulatory fiat that mandates some services be provided for free. Indeed, permitting IXCs to evade payment of access on certain wireless calls – particularly when the IXC is presumably being paid by the wireless carrier to handle such calls – creates an artificial regulatory incentive for wireless carriers to avoid interconnecting directly or even indirectly on a local basis with RLECs.[19]

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[17] *Association PFR* at 37.

[18] *E.g.*, Opposition and Comments of CTIA, WC Docket No. 10-90, *et al.,* at 5-8 (filed Feb. 9, 2012); T-Mobile USA Opposition to Petitions for Reconsideration, WC Docket No. 10-90, *et al.,* at 3 (filed Feb. 9, 2012) (*T-Mobile Opposition*).

[19] Contrary to claims by MetroPCS, *see* Comments of MetroPCS, WC Docket No. 10-90, *et al.*, at 10-11 (filed Feb. 9, 2012), the Associations' request would not prevent wireless

Issues associated with the application of the intra-MTA rule to traffic voluntarily terminated over IXC facilities by wireless carriers were discussed recently in an *ex parte* presentation submitted by the National Telecommunications Cooperative Association ("NTCA") and the South Dakota Telecommunications Association ("SDTA").[20] The NTCA/SDTA *ex parte* explained in detail why it will be impractical for RLECs to implement a B&K ICC regime for IXC-routed intraMTA traffic by July 1, 2012.[21] The NCTA/SDTA *ex parte* also explained why the use of billing "factors" – much touted as a cure-all by wireless carriers opposing the Associations' PFR – are of no help in resolving disputes over IXC-delivered traffic supposedly claimed as intra-MTA.[22] The Commission should not turn a blind eye to the real-world, practical problems identified in the Associations' PFR as well as elsewhere in the record.

carriers from obtaining indirect interconnect but would instead provide such carriers with economic incentives to purchase appropriate connections and to correctly route calls.

[20] Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (filed Feb. 9, 2012).

[21] *Id.* at 1-2.

[22] *Id*. at 2. T-Mobile's broad assertion that wireless carriers will negotiate jurisdictional factors to correctly determine the charges involved is disingenuous at best since many wireless carriers refuse to negotiate such agreements with RLECs. The impacts of the *T-Mobile Order,* which establishes the right to demand interconnection for such traffic, have been mixed at best because of the high cost of arbitrations and the refusal of wireless carriers to make reasonable arrangements for delivery of traffic. Moreover, this argument ignores that the wireless carrier *is not involved* in such deliberations/traffic exchange. The question is whether *the IXC* with whom the wireless carrier has contracted is liable for access charges, or if it can demand to receive free of charge some portion of the access services and facilities it uses by claiming to serve a wireless carrier for some percentage of the calls at issue. *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs,* Declaratory Ruling and Report and Order, 20 FCC Rcd. 4855 (2005) (*T-Mobile Order*).

C. The Commission Should Reaffirm Use of the "Telephone Numbers Rule" To Jurisdictionalize Traffic Absent Alternative Agreements Between Carriers.

In the *Order*, the Commission declined to adopt a rule that the originating and terminating telephone number be used to determine the jurisdiction of a call on a default basis in the context of reaching a decision on the use of Calling Party Number ("CPN")/Charge Number ("CN") data in the phantom traffic rules.[23] The Associations asked the FCC to reconsider this ruling, and indicated in their PFR that the normal industry practice is to jurisdictionalize calls based on the originating and terminating telephone numbers.[24]

Some wireless carriers deny that there is any such industry practice, while others argue telephone numbers are irrelevant for wireless calls.[25] In fact, originating and terminating telephone numbers of calling and called parties are widely used to determine the jurisdiction of traffic for purposes of rating calls.[26] In the *Local Competition Order*, the Commission recognized that traditional methodologies may not work for wireless carries, and therefore stated that carriers "may" use traffic studies or other estimates of usage to determine the jurisdiction of traffic.[27] The Associations' PFR simply asks that

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[23] *Order* ¶ 711, note 1212.

[24] *Association PFR* at 38. It is unclear whether the FCC, in that portion of the *Order,* even intended to affect the general telephone numbers rule at all.

[25] *See, e.g.*, *T-Mobile Opposition* at 5; *Verizon Opposition* at 6.

[26] Indeed, this is the very reason why CPN must be passed through to the terminating carrier, and why the FCC adopted comprehensive phantom traffic rules in this proceeding. *Order* ¶¶ 702, *et seq*. Put another way, if telephone numbers are *not* used to establish the jurisdiction of traffic, the Commission's ostensibly significant effort to address phantom traffic by requiring the passage of CPN is in fact meaningless.

[27] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd.

the Commission reaffirm the general rule as the default rule, but continue to permit carriers to negotiate other arrangements pursuant to interconnection agreements, consistent with past Commission precedent.

Relatedly, the Associations requested the Commission reconsider its decision not to require transmission of adequate carrier identification information (Carrier Identification Code ("CIC") and/or Operating Company Number ("OCN") as part of its revised call signaling rules.[28] AT&T opposes this request, relying on the Commission's finding that such a requirement would "introduce significant technical complexities that would be ill-suited for regulatory resolution."[29]

In fact, failure to address the need for providing such data in the signaling stream is a major source of confusion that leads to numerous billing disputes, which are apparently equally ill-suited for regulatory resolution. A simpler approach suggested in the Associations' PFR would be to adopt the Commission's own prior suggestion to place financial responsibility for traffic not bearing adequate billing information on the last carrier in the call stream.[30] In turn, an intermediate provider would be permitted to charge the service provider that preceded it in the call path, until ultimately the carrier that improperly labeled the traffic would be required to pay.[31] If, however, the

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15499 (1996) ¶ 1044 (*Local Competition First Report and Order*); 47 C.F.R. § 51.701(b)(2).

[28] *Association PFR* at 37-39.

[29] *AT&T Comments* at 41.

[30] *Association PFR* at 38.

[31] As explained in the Associations' PFR, this would assure that the entity responsible for failing to provide adequate signaling data would fairly bear the costs of such non-compliance, instead of transferring costs to the terminating carrier. In addition, by reducing or eliminating disputes over non-payments, this approach will significantly reduce upward pressure on the CAF ICC Support mechanism. *Id.* at 39.

Commission neither requires the passage of carrier identification information nor requires the preceding provider in the call flow to take financial responsibility for calls traversing its network, its phantom traffic rules will do little, if anything, in the mid- to long-term to address gamesmanship in call delivery.

D. The Commission Should Calculate ICC Baseline Revenues On the Basis of Billed, Not Collected, Revenues.

The Associations concur with the arguments of the Independent Telephone and Telecommunications Alliance ("ITTA") that billed rather than collected revenues should be used when determining "Eligible Recovery" pursuant to the baseline revenues calculation for the ICC CAF mechanism,[32] and extend ITTA's logic to include RoR as well as price cap carriers' intrastate access and reciprocal compensation revenues. As ITTA indicates, the use of "collected" revenues inaccurately and unfairly understates the access revenue baseline for the entire ICC transition period by penalizing carriers for billing disputes and late payments and by double counting uncollectable revenues. In addition, as USTelecom has pointed out, there is no systemized process for allocating interstate switched access revenues (or originating versus terminating access revenues) between "billed" and "collected" revenues.[33] The Associations agree, and urge the Commission to use billed intrastate switched access and reciprocal compensation revenue in calculating baseline revenues for the ICC CAF mechanism for both price cap and RoR carriers.

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[32] Opposition of the Independent Telephone and Telecommunications Alliance, WC Docket No. 10-90, *et al.*, at 12-13, (filed Feb. 9, 2012).

[33] *Id.*; *see also* Petition for Reconsideration of the United States Telecom Association, WC Docket No. 10-90, *et al*., at 30 (filed Dec. 29, 2011).

IV. CONCLUSION.

The Associations urge the Commission to adopt the clarifications and modifications proposed in their PFR. The Associations also ask the Commission to adopt the compromise proposals in this docket, and reject opponents' attempts to prevent such reasonable approaches. In particular, the Associations ask the Commission to stabilize the intercarrier compensation transition by allowing RLECs to use normal billing procedures for PSTN-VoIP originated intrastate calls, to bill access charges for all calls delivered through an IXC, to use originating and terminating telephone numbers as a default method to jurisdictionalize traffic, and to use billed intrastate switched access and reciprocal compensation revenue in calculating baseline Eligible Recovery for both price cap and RoR ICC CAF mechanisms.

Respectfully submitted,

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