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

ORDER ON RECONSIDERATION

Adopted: December 23, 2011 **Released: December 23, 2011**

By the Commission:

1. In this Order, the Commission modifies on its own motion two aspects of the *USF/ICC Transformation Order*.[1]

2. In the *USF/ICC Transformation Order*, the Commission eliminated its former list of nine supported services and amended section 54.101 of the Commission's rules to specify that "voice telephony service" is supported by federal universal service support mechanisms.[2] The Commission found this to be a more technologically neutral approach that focuses on the functionality offered instead of the technologies used, while allowing services to be provided over any platform.[3] This approach also recognizes that many of the services enumerated in the previous rule are universal today and that the

[1] *See In the Matter of 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 an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, 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, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*).

[2] *Id.* at para. 78; *see also id.* App. A at 536 (revising section 54.101(a) of the Commission's rules); *see* 76 FR 73830, 73870 (Nov. 29, 2011) (revising 47 C.F.R. § 54.101(a) with an effective date of December 29, 2011).

[3] *See USF/ICC Transformation Order* at para. 77.

importance of operator services and directory assistance, in particular, has declined with changes in the marketplace.[4] A number of parties have raised questions about how the amended rule should be understood to affect Lifeline-only ETCs and their compliance with section 214(e)(1)(A) of the Act, which requires a carrier to provide supported services using its own facilities, in whole or in part, in order to be eligible to receive support.[5] Several have urged the Commission to take action to ensure that there is no disruption to the services currently being provided to millions of eligible Lifeline consumers by ETCs that have already been designated based on their provision of supported services as previously defined by the Commission.[6]

3. We note that, in adopting the new definition of "voice telephony" in section 54.101, the Commission eliminated certain services and functionalities from the list of supported services, consistent with its findings regarding the evolution of the marketplace.[7] To more clearly reflect our intent to specify the attributes of "voice telephony" in the new definition, we amend section 54.101 to read: "Services designated for support. Voice telephony services shall be supported by federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation for qualifying low-income consumers (as described in subpart E of this part)."[8]

4. Additionally, we hereby affirm that only carriers that provide "voice telephony" as defined under section 54.101(a) as amended using their own facilities will be deemed to meet the requirements of section 214(e)(1). Thus, a Lifeline-only ETC does not meet the "own facilities" requirement of section 214(e)(1) if its only facilities are those used to provide functions that are no longer supported "voice telephony service" under amended rule 54.101, such as access to operator service or directory assistance.[5] Therefore, to be in compliance with our rules, Lifeline-only carriers that seek ETC designation after the December 29, 2011 effective date of the *USF/ICC Transformation Order,* as well as such carriers that had previously obtained ETC designation prior to December 29, 2011 on the basis of

[4] *See id.* para. 78 & n.114.

[5] Nexus Communications, Inc. Petition for Clarification and/or Reconsideration. 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, CC Docket No. 96-45, WC Docket No. 03-109 (filed Dec. 14, 2011) (Nexus Petition); Letter from Mitchell F. Brecher, Greenberg Traurig, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 (filed Dec. 12, 2011); Letter from John J. Heitmann, Link Up for America Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-42, 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 and WT Docket No. 10-208 (filed Dec. 12, 2011) (Link Up Coalition Ex Parte); Letter from Mary C. Albert, CompTel, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-42, 03-109 and CC Docket No. 96-45 (filed Dec. 8, 2011); *see also* 47 U.S.C. § 214(e)(1)(A) (stating that an ETC receiving federal universal service support shall, throughout its designated service area, offer services that are supported by federal universal service mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services).

[6] Nexus Petition at 4; Link Up Coalition Ex Parte at 1.

[7] The prior rule enumerated nine supported services in functional terms. *USF/ICC Transformation Order*, para. 76. Consistent with the marketplace findings in the *USF/ICC Transformation Order*, the new rule shifts away from terminology based on the "specific technology used to provide the supported service," *id*. at para. 77, and also did not include certain functionalities that had been in the prior rule. *See, e.g.*, *id*. at para. 77 n.114 ("we do not mandate that ETCs provide operator services or directory assistance; we find the importance of these services to telecommunications consumers has declined with changes in the marketplace").

[8] *See* Appendix. We eliminate language stating that voice telephony service "include[s]" certain functionalities to eliminate the possibility that the list could be interpreted as non-exhaustive.

facilities associated solely with, for example, access to operator service or directory assistance, must either use their own facilities, in whole or in part, to provide the supported "voice telephony service," or obtain forbearance from the "own facilities" requirement from the Commission.[9] As discussed more fully below,[10] the effective date of this minor modification to the language in amended section 54.101 is the date of Federal Register publication of this Order on Reconsideration. To avoid disruption to consumers of previously designated ETCs, however, we set July 1, 2012 as the effective date of amended rule 54.101 for Lifeline-only ETCs in the service areas for which they were designated prior to December 29, 2011. We anticipate that the Commission may address the "own facilities" requirement for Lifeline providers in the near future in a subsequent order addressing the Commission's Lifeline program. In the event that this *Order on Reconsideration* is not published in the Federal Register before December 29, we will consider the amended rule as adopted in the *USF/ICC Transformation Order* suspended with respect to this limited class of ETCs, so that our actions in the *USF/ICC Transformation Order* do not impact existing state designations.

5. In the *USF/ICC Transformation Order*, the Commission adopted bill-and-keep as the default intercarrier compensation methodology for non-access traffic exchanged between local exchange carriers (LECs) and Commercial Mobile Radio Service (CMRS) providers. Rather than implementing a more gradual transition, the *USF/ICC Transformation Order* made the default bill-and-keep methodology applicable as of the effective date of the rules (December 29, 2011).[11] This timing reflected the Commission's balancing of the benefits of providing clarity and addressing arbitrage and, in particular, traffic pumping,[12] against the apparently small risk of marketplace disruption from doing so.[13] There was little, if any, evidence in the record that there would be significant harmful effects on any LECs as a result of this timing.[14] One factor supporting our conclusion with regard to incumbent LECs was the understanding that such carriers would be eligible to receive recovery as part of the transitional recovery mechanism for reductions in net reciprocal compensation payments.[15] Another factor was adoption of an interim rule that limited the responsibility for transport costs applicable to non-access traffic exchanged between CMRS providers and rural, rate-of-return incumbent LECs.[16]

6. We now reconsider the balancing of benefits and burdens in this context. We find it more appropriate to make the default bill-and-keep compensation methodology for LEC-CMRS non-access traffic consistent with the start of the transitional intercarrier compensation recovery mechanism for carriers that were exchanging LEC-CMRS traffic under existing interconnection agreements prior to the adoption date of the *USF/ICC Transformation Order*. Under the recovery rules as adopted, the transitional recovery mechanism does not begin until July 1, 2012, and it is unclear whether incumbent

[9] This action is consistent with our conclusions that, taking into account changes in technologies and services, the importance of functions such as access to operator services and directory assistance has declined. *See supra* para. 2. *See also USF/ICC Transformation Order*, paras. 77-78 & n.114; 47 U.S.C. § 254(c)(1) (directing the Commission to establish a definition of universal service "taking into account advances in telecommunications and information technologies and services").

[10] *See infra* para. 12.

[11] *See USF/ICC Transformation Order* at paras. 995-97. This rule, 47 C.F.R. § 51.705(a), was published in the Federal Register on November 29, with an effective date of December 29, 2011. *See* 76 FR 73830, 73855 (Nov. 29, 2011).

[12] *USF/ICC Transformation Order* at para. 995. We found for several reasons that this problem was more acute with respect to this traffic than with respect to other LEC traffic. *Id.*

[13] *Id.* at paras. 996-97.

[14] *Id*.

[15] *Id*. at para 997; *see also id*. at para. 847; 47 C.F.R. §§ 51.915(d), 51.917(d), 54.1101.

[16] *See USF/ICC* Transformation *Order* at para. 998-99 & App. A, 47 C.F.R. § 51.709 (c)

LECs will be eligible to receive recovery for reductions in revenues from December 29, 2011 through July 1, 2012.[17] The Commission had anticipated carriers would continue to receive payment at the rates in place under existing interconnection agreements while they were being renegotiated.[18] However, we believe that this assumption is over-inclusive and not entirely accurate since interconnection agreements are negotiated between two parties and contain different terms and conditions for implementing change of law provisions – indeed, some may relate back to the effective date of the new rule, rather than when the renegotiated agreement is in place.[19] Moreover, the Commission believed that, as a general matter, LEC-CMRS agreements contained rates at $0.0007 or less as their reciprocal compensation rate.[20] Parties indicate, however, that many existing LEC-CMRS agreements reflect reciprocal compensation rates "much higher than $0.0007."[21] Thus, the supplemental record suggests that the Commission did not accurately assess the impact of its decision to immediately move to bill-and-keep for all LECs for this category of traffic.

7. Enabling carriers that have effective interconnection agreements governing the exchange of LEC-CMRS non-access traffic as of the adoption date of the *USF/ICC Transformation Order* to continue to exchange traffic and receive compensation pursuant to those existing agreements until July 1, 2012 will minimize market disruption, while enabling carriers to begin the process of revising such agreements immediately.[22] In contrast, carriers exchanging LEC-CMRS non-access traffic without an interconnection agreement do not receive such compensation today, so we find no likelihood of

[17] Commenters interpreting the Commission's rules question the ability to recover through the recovery mechanism lost revenues that occur between December 29, 2011 and June 30, 2012 *See, e.g.,* Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, at 1-2 (filed Dec. 14, 2011) (NTCA Dec. 14 *Ex Parte* Letter); Letter from Karen Brinkmann, Counsel for CenturyLink, Fairpoint Communications, Inc., Frontier Communications Corp., and Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, at 2 (filed Dec. 16, 2011) (Mid-Sized LECs Dec. 16 *Ex Parte* Letter).

[18] *See USF/ICC Transformation Order* at para. 1000.

[19] *See* Letter from Jeffrey Lanning, Assistant Vice President, Regulatory, CenturyLink, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Dec. 20, 2011).

[20] *See USF/ICC Transformation Order* at para. 997.

[21] Mid-Sized LECs Dec. 15 *Ex Parte* Letter at 2; Letter from Thomas Jones and Nirali Patel, Counsel for Integra Telecom, Inc. and tw telecom inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, at 2 (filed Dec. 19, 2011) (providing additional evidence that reciprocal compensation rates for LEC-CMRS non-access traffic exchanged pursuant to interconnection agreements are substantially higher than $0.0007). *See also* Letter from Yaron Dori and Matthew S. DelNero, Counsel to TDS Telecom, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, at 2 (filed Dec. 19, 2011) (submitting data "confirming the relative significance" of this revenue for LECs).

[22] As one *ex parte* filing notes, the Commission has before it requests to "… delay the implementation of bill and keep for intraMTA CMRS-LEC traffic exchange or, in the alternative, to ensure the incumbent LECs are able to offset any 'lost' revenue through the Access Recovery Mechanism." Letter from Steven F. Morris, Vice President and Associate General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, at 1 (filed Dec. 19, 2011) (citing NTCA Dec. 14 *Ex Parte* Letter; Mid-Sized LECs Dec. 14 *Ex Parte* Letter). We conclude it is appropriate to harmonize the beginning or the transition to bill-and-keep for such traffic exchanged subject to interconnection agreements with the beginning of associated recovery because that was the intent of the *Order*. Moreover, we decline to allow the rule to go into effect and provide incumbent LECs with additional recovery for the period from December 29, 2011 and June 30, 2012. Because the Commission lacks sufficient data at a granular level for us to quantify the impact of any such "true up", adopting a "true up" approach likely could enable carriers to get additional recovery from the CAF that was not anticipated in the budget. Given our commitment to keeping within the CAF budget and our inability to quantify with certainty the impact of any such "true up", we decline to adopt this "true up" approach.

marketplace disruption that would support reconsideration of our decision in that context.[23] Accordingly, intercarrier compensation for non-access traffic exchanged between LECs and CMRS providers pursuant to an interconnection agreement in effect as of the adoption date of this Order, will be subject to a default bill-and-keep methodology on July 1, 2012 rather than on December 29, 2011.[24] In the event that this Order is not published in the Federal Register before December 29, 2011, we also find good cause to waive these requirements to the extent necessary to preserve the status quo until such time that this Order goes into effect. The Commission may waive its rules for good cause shown.[25] We find that waiver, if needed to preserve the status quo for a limited period consistent with this Order, will serve the public interest by protecting against the potential marketplace disruption, described above, that the Commission sought to avoid through the intercarrier compensation rule changes adopted in this Order. We expect that, unless parties mutually agree otherwise, traffic will continue to be exchanged pursuant to existing interconnection agreements between the adoption date of this Order and June 30, 2012. We caution that parties should not use this Order as an opportunity to abuse the distinction between traffic subject to an interconnection agreement as of the adoption date of the *USF/ICC Transformation Order* and traffic not subject to an interconnection agreement in order to engage in arbitrage to avoid payment of intercarrier compensation charges. Indeed, the Commission will be monitoring the situation and will not hesitate to take action if it appears any such arbitrage is occurring.

8. We strongly urge all parties with such agreements to immediately begin preparations for the July 1 effective date of the transitional recovery mechanism, including by commencing discussions regarding change-of-law provisions, if applicable.[26] LECs should not view this Order as an excuse for delaying negotiations or deferring preparations.[27] To ensure that the change we adopt does not create incentives to engage in such delay, and consistent with the balance of interests discussed above, we provide that, unless parties mutually agree otherwise, starting on July 1, 2012, compensation for traffic

[23] We acknowledge that under the *T-Mobile Order*, a LEC may receive interim compensation absent an interconnection agreement after making a request for interconnection. *See Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855, 4865, para. 16 (2005), *petitions for review pending*, *Ronan Tel. Co. et al. v. FCC*, No. 05-71995 (9th Cir. filed Apr. 8, 2005); 47 C.F.R. section 20.11(e). Given our adoption of a default bill-and-keep methodology for all non-access LEC-CMRS traffic, we decline to permit LECs to receive an increase in compensation after the adoption date of this Order. Indeed, we are harmonizing the effective date of the rule to July 1, 2012 (where carriers had an interconnection agreement in place as of the adoption date of this Order) to avoid market disruption and harmonize rate reductions with the recovery rules. Permitting LECs to receive increased compensation during this time would be in tension with these principles. We therefore amend subsection section 20.11 of the Commission's rules to ensure consistency between our decision in the *USF/ICC Transformation Order* and our rules. *See* Appendix.

[24] We similarly adjust the timing of the rural transport rule because the basis for this rule was a gradual transition for these carriers to the default bill-and-keep methodology and therefore the timing for the two rules should be the same. *See USF/ICC Transformation Order* App. A at 509 (amending § 51.709(c)). We emphasize that, by providing for a default bill-and-keep methodology to apply on July 1, 2012 rather than on December 29, 2011, we do not extend the terms of existing contracts until July 1, 2012 that would otherwise expire before that time.

[25] *See* 47 C.F.R. § 1.3. *See also Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*citing WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (petitioners for waiver must show special circumstances warranting a deviation from the general rule, and show such deviation will serve the public interest)).

[26] *See* Letter from Norina T. Moy, Director, Government Affairs, Sprint, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, at 2 (filed Dec. 16, 2011).

[27] Indeed, evidence of such delay could be tantamount to a violation of a LEC's obligation to negotiate interconnection agreements in good faith. *See* 47 U.S.C. § 251(c)(1) (requiring that incumbent LECs engage in good faith negotiations); *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1497 paras. 229-30 (1994) (requiring LEC-CMRS interconnection agreements to be negotiated in good faith).

exchanged during the re-negotiation of interconnection agreements with change-of-law provisions[28] will be subject to true-up at the level of reciprocal compensation for non-access LEC-CMRS traffic established in the resulting interconnection agreement, whether the default of bill-and-keep or other pricing negotiated by the carriers. We find that this limited departure from the Commission's prior determination not to override compensation arrangements in existing contracts is justified to ensure that the onset of bill-and-keep is not unilaterally delayed beyond the intended transition period due to delayed or extended re-negotiations under contractual change-of-law provisions.[29] When the Commission set an immediate effective date for a default bill-and-keep methodology for this traffic in the *USF/ICC Transformation Order*, we found that re-negotiation under such provisions would help provide a reasonable transition for LECs with such agreements. Now, the change in the effective date for bill-and-keep provides a transition for non-access LEC-CMRS traffic to mitigate marketplace disruption for carriers for which these revenues may be significant today. Given that change, we find that this measure is necessary to maintain the balance of benefits to consumers and carriers from a default bill-and-keep methodology that the Commission intended in the *USF/ICC Transformation Order*. Further, because of the limited nature of this modification, we find that it will not have the harmful effects that concerned the Commission in adopting its general policy on existing agreements.[30] We also find that adoption of this limited measure will have minimal adverse impact on carriers.[31]

9. *Regulatory Flexibility Certification*. The Regulatory Flexibility Act (RFA)[32] requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless

[28] To be subject to this requirement, an interconnection agreement must have a change-of-law provision triggered by Commission changes to intercarrier compensation regulations.

[29] *See* Letter from Carl W. Northrup, Counsel to MetroPCS, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208 at 9 (filed Dec. 21, 2011) (urging the Commission to distinguish between situations where there was an existing agreement between a CMRS carrier and the LEC at the time of the *CAF/ICC Transformation Order* from those situations where no agreement existed); *see also* Letter from Scott K. Bergmann, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, GN Docket No. 09-51, CC Docket No. 01-92 at 5-6 (filed Dec. 22, 2011).

[30] In particular, we emphasize that this change does not affect contracts that do not have change-of-law provisions, and does not require a "fresh look" for contracts, and thus do not deprive carriers of the benefit of long-term contracts. The impact of this modification on carriers is further limited because it will not apply to traffic exchanged during negotiations except where such negotiations extend beyond June 30, 2012.

[31] For example, this limited action will not improperly interfere with investment-backed decisions because any resulting net reduction in reciprocal compensation received by incumbent LECs will be subject to potential recovery through the recovery mechanism beginning in July 1, 2012, as specified in the *USF/ICC Transformation Order*. *See supra* para. 5. Other carriers' resulting net loss of intercarrier compensation can be recovered through other rates. *See, e.g.*, *USF/ICC Transformation Order*, paras. 864-66. In addition, carriers have entered these agreements against the backdrop of long-contemplated intercarrier compensation reform. *See, e.g.*, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001); *see also, e.g.*, *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd 6475, 6627, App. A, para. 292 (seeking comment on a proposal to allow a "fresh look" for interconnection agreements in "evergreen" status); *id*. at 6825, App. C at para. 287 (same). We also note that prior Commission actions in the context of LEC-CMRS intercarrier compensation have provided more broadly for a "fresh look" of agreements as a result of intercarrier compensation reforms. *See, e.g.*, *Local Competition Order*, 11 FCC Rcd 15499, 16044-45, para. 1095 (1996). Moreover, because our actions here will not deprive any carrier of the opportunity for adequate cost recovery and otherwise are reasonable, they do not constitute a regulatory taking. *See USF/ICC Transformation Order*, para. 925. *See also Connolly v. Pension Ben. Guaranty Corp*., 475 U.S. 211, 224-25 (1986); *FPC v. Hope Natural Gas Co*., 320 U.S. 591, 605 (1944).

[32] *See* 5 U.S.C. § 604. The RFA, *see* 5 U.S.C. § 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[33] We hereby certify that this rule revision will not have a significant economic impact on a substantial number of small entities, because the action merely maintains the status quo for the entities affected. The Commission will send a copy of this Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.[34] In addition, the *Order* (or a summary thereof) and certification will be published in the Federal Register.[35]

10. *Paperwork Reduction Act Analysis*. This document contains no modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. There is also no information collection associated with this rule revision, so no OMB approval is required for the revised rules.

11. *Congressional Review Act*. The Commission will send a copy of this Order on Reconsideration in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act ("CRA").[36]

12. *Effective Date*. We conclude that good cause exists to make the effective date of the amendments to rule 54.101 effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act.[37] Agencies determining whether there is good cause to make a rule revision take effect less than 30 days after Federal Register publication must balance the necessity for immediate implementation against principles of fundamental fairness that require that all affected persons be afforded a reasonable time to prepare for the effective date of a new rule.[38] In this instance, no ETC will be prejudiced by this Order being effective immediately upon publication in the Federal Register because this action merely clarifies the intent of the *USF/ICC Transformation Order* and, by delaying the implementation date of the modified rule, restores the status quo for Lifeline-only ETCs in those states where they have already been designated that existed prior to the *USF/ICC Transformation Order* for a defined period of time. This will allow the Commission the opportunity to take further action with respect to the "own facilities" requirement for such providers in the context of the low-income program.

13. We also conclude that good cause exists to make the revisions to sections 20.11(e), 51.705(a), and 51.709(c) effective immediately upon publication in the Federal Register.[39] As discussed above, allowing the rules subject to this Order to go into effect on December 29, 2011 may potentially result in a significant financial impact on LECs exchanging non-access LEC-CMRS traffic pursuant to interconnection agreements, contrary to the Commission's initial assumptions. Thus, we find good cause to make these rule revisions take effect upon publication in the Federal Register. Again, no parties will be prejudiced by this Order being effective immediately upon publication in the Federal Register because this action merely permits LECs and CMRS providers exchanging non-access traffic pursuant to an interconnection agreement to maintain the status quo for a defined period of time.

14. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403 of the Communications Act of 1934, as

[33] 5 U.S.C. § 605(b).

[34] *Id.*

[35] *Id.*

[36] *See* 5 U.S.C. § 801(a)(1)(A).

[37] 5 U.S.C. § 553(d)(3). For Lifeline-only ETCs that have already been designated, our intent is to preserve the status quo in the service areas for which they are currently designated for a limited period of time as set forth above.

[38] *Omnipoint Corporation v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996), *citing United States v. Gavrilovic*, 551 F.2d 1099, 1105 (8th Cir. 1977).

[39] 5 U.S.C. § 553(d)(3).

amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and sections 1.1 and 1.108 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.108, that this Order on Reconsideration IS ADOPTED.

15. IT IS FURTHER ORDERED that the Order shall become effective immediately upon publication in the Federal Register, with the exception of the waiver of sections 51.705(a) and 51.709(c), 47 C.F.R. §§ 51.705(a), 51.709(c), to the extent described above, which is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47

CFR parts 20 and 54 to read as follows:

PART 20 -- COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 301, 303, 316, and 332 unless otherwise noted. Section 20.12 is also issued under 47 U.S.C. 1302.

2. Section 20.11 is amended by revising paragraph (e) to read as follows:

§20.11 Interconnection to facilities of local exchange carriers.

* * * * *

(e) An incumbent local exchange carrier may request interconnection from a commercial mobile radio service provider and invoke the negotiation and arbitration procedures contained in section 252 of the Act. A commercial mobile radio service provider receiving a request for interconnection must negotiate in good faith and must, if requested, submit to arbitration by the state commission.

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PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

Subpart B—Services Designated for Support

2. Revise §54.101 to read as follows:

§ 54.101 Supported services for rural, insular and high cost areas.

(a) Services designated for support. Voice telephony services shall be supported by federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation for qualifying low-income consumers (as described in subpart E of this part).

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