**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 |

**OPPOSITION**
**OF THE**
**NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;**
**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;**
**ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES; and**
**WESTERN TELECOMMUNICATIONS ALLIANCE**
**TO**
**VARIOUS PETITIONS FOR RECONSIDERATION**

February 9, 2012

***Summary***

The Rural Associations (NECA, NTCA, OPASTCO and WTA) oppose certain portions of the petitions for reconsideration filed in the captioned proceedings on December 29, 2011.

The Rural Associations ask the Commission to recognize the critical and substantial benefits of Carrier of Last Resort ("CoLR") regulation to rural consumers that have been demonstrated in the record not only by rural local exchange carriers ("RLECs") but also by state regulators and state consumer advocates. They request the Commission reaffirm its decision not to pre-empt or otherwise modify state CoLR regulation, and deny those portions of the reconsideration petitions of ViaSat, Inc. ("ViaSat"), the Wireless Internet Service Providers Association ("WISPA") and NTCH, Inc. ("NTCH") that would undermine CoLR regulation by expanding the definition of "unsubsidized competitor" to include satellite broadband providers, standalone fixed wireless service providers, and mobile wireless service providers, respectively. Rather, the Commission should retain the current section 54.5 definition of "unsubsidized competitor" as a "facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support."

The Commission should also uphold its decision not to include any general "technical infeasibility" exemption in its revised call signaling rules, and recognize that accurate and timely call detail information will need to be transmitted in call signals to allow for the rendering of accurate bills for at least the next nine years while ICC charges continue to apply. It should deny the portion of the petition for reconsideration of Verizon and Verizon Wireless ("Verizon") that would eviscerate the new phantom traffic rules by creating loopholes in the form of open-ended "technical feasibility" or "industry standards" exceptions to call signaling requirements. Like other large and small carriers, Verizon can request limited waivers of the call signaling rules

where it can demonstrate actual and appropriate good cause with respect to portions of its own network.

The Commission should also deny the portion of the petition for reconsideration of the United States Telecom Association ("USTelecom") that calls for the capping of RLEC intrastate originating access charges at current rates. Even if the Commission determines that it has jurisdiction to take this step, it should do nothing at this time to further cap or reduce RLEC revenue streams without providing additional high-cost support above the current $2.0 billion RLEC budget target.

Finally, the Commission should deny the portion of the NTCH reconsideration petition that asks, without support or consideration of the consequences, that RLECs accepting high-cost support be required to cap their access charges in a "flash cut" manner at the much lower levels charged in urban areas.

**TABLE OF CONTENTS**

**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 |

**OPPOSITION**
**OF THE**
**NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;**
**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;**
**ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES; and**
**WESTERN TELECOMMUNICATIONS ALLIANCE**
**TO**
**VARIOUS PETITIONS FOR RECONSIDERATION**

Pursuant to section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), as modified by the December 23, 2011 *Order* in the captioned proceedings,[1] the National Exchange Carrier

[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*,*

Association, Inc.; the National Telecommunications Cooperative Association; the Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance (jointly referred to herein as "the Rural Associations")[2] hereby oppose portions of certain December 29, 2011 petitions for reconsideration of the Commission's November 18, 2011 *Order*[3] in the above-captioned proceedings.

Specifically, the Rural Associations oppose: (1) the portions of the reconsideration petitions of ViaSat, Inc. ("ViaSat"), the Wireless Internet Service Providers Association ("WISPA") and NTCH, Inc. ("NTCH") that would ignore the basis and undermine the benefits of state Carrier of Last Resort ("CoLR") regulation – and ignore the very real needs and demands of rural consumers for reasonably comparable services at reasonably comparable rates – by expanding the definition of "unsubsidized competitor" to include satellite broadband providers, standalone fixed wireless service providers, and/or mobile wireless service providers; (2) the portion of the petition for reconsideration of Verizon and Verizon Wireless ("Verizon") that would eviscerate the new phantom traffic rules by creating loopholes in the forms of "technical

---

*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*,* Order, DA 11-2063 (rel. Dec. 23, 2011).

[2] The National Exchange Carrier Association, Inc. ("NECA") is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally,* 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983). The National Telecommunications Cooperative Association ("NTCA") is a national trade association representing more than 580 rural rate-of-return regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") is a national trade association representing approximately 460 small incumbent local exchange carriers ("ILECs") serving rural areas of the United States. The Western Telecommunications Alliance ("WTA") is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River.

[3] *Connect America Fund,* WC Docket No. 10-90*, et al.,* Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) *(Order* or *FNPRM).*

feasibility" or "industry standards" exceptions to call signaling requirements; (3) the portion of the petition for reconsideration of the United States Telecom Association ("USTelecom") that calls for capping rate-of-return-regulated rural local exchange carrier ("RLEC") originating intrastate access charges at current rates; and (4) the portion of the petition for reconsideration of NTCH that asks that RLECs accepting high-cost support be required to cap their access charges at levels comparable to those charged in urban areas.

## I. CRITICAL CARRIER OF LAST RESORT CONSIDERATIONS REQUIRE CAREFUL DEFINITION OF THE "UNSUBSIDIZED COMPETITORS" THAT MAY LIMIT RURAL HIGH-COST SUPPORT.

In a December 29, 2011, petition for reconsideration herein, NECA, OPASTCO, and WTA asked the Commission to reconsider that portion of the *Order*[4] that adopted a rule phasing out high-cost support in study areas where "unsubsidized competitors" offer voice and broadband service to 100 percent of business and residential locations, at least until such time that a series of difficult and significant questions relating to CoLR and other ILEC obligations of RLECs can be further examined and resolved.[5]

Throughout these proceedings, the Rural Associations have submitted descriptions of their CoLR responsibilities, as well as the economic impacts and public interest advantages thereof.[6] It is not just RLECs themselves, however, that recognize the significance of CoLR responsibilities in ensuring that rural, high-cost areas remain served. Both state regulators and

---

[4] *Id.* ¶ 283.

[5] Petition for Reconsideration and Clarification of NECA, OPASTCO and WTA, WC Docket No. 10-90, *et al.* (filed Dec. 29, 2011) at 18-19 (*NECA, OPASTCO, WTA Petition*).

[6] *See, e.g.*, Comments of the National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and Western Telecommunications Alliance, WC Docket No. 10-90 *et al*. (filed Apr. 18, 2011) at 69-75 (*Rural Associations April 18, 2011 Comments*).

state consumer advocates have indicated the paramount need for CoLRs that commit to serve the entirety of far-reaching and sparsely populated high-cost areas. Indeed, the State Members of the Joint Board on Universal Service have noted several times that universal service reform and achievement of the ultimate objective of affordable and high-quality rural broadband require "great reliance on preserving and advancing universal service through a Provider of Last Resort (POLR) Fund."[7] The Joint Board's 2007 Recommended Decision called for adjustments to existing universal service mechanisms that would ensure these mechanisms retain their "effectiveness in maintaining an essential network for [CoLRs]."[8]

Essentially, CoLR obligations require RLECs and other ILECs to design and operate integrated networks that serve not only rural population centers ("donut holes") but also outlying customers and customer clusters that are unprofitable or otherwise economically unattractive due to distance, terrain, climate and similar factors that increase construction and operating costs ("donut areas"). Unlike most potential "unsubsidized competitors," CoLRs cannot pick only the more profitable customers and/or locations within their state-designated service areas, but must extend service to all or virtually all potential customers within such areas.

As the state regulators and state consumer advocates who represent the interests of consumers in rural areas have made clear, CoLR requirements advance universal service by bringing voice and broadband services to substantial numbers of rural households that otherwise

---

7 Comments by State Members of the Federal-State Joint Board on Universal Service, WC Docket No. 10-90, *et al*. (filed May 2, 2011) at 21 (*State Members' Comments*); *see also* Comments of the National Association of State Utility Consumer Advocates, WC Docket No. 10-90, *et al*. (filed Aug. 24, 2011) at 6 (criticizing proposals that would allow carriers to obtain universal service/Connect America Fund support while evading CoLR obligations across their study areas).

8 *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477 (2007) ¶ 30.

would remain unserved. However, these requirements also impose costs upon RLECs and other CoLRs, such as substantial unrecovered capital expenditures and outstanding construction loan balances, continuing above-average operating expenses, exacting service and service quality obligations, and significant regulatory obligations, including detailed (and often audited) reporting requirements.

In the *Order*, the Commission properly determined not to modify the existing authority of states to establish and monitor CoLR obligations.[9] It must be careful, on reconsideration, not to indirectly impair or pre-empt state CoLR regulation by loosely defining large numbers of "unsubsidized competitors" in a manner that may cause unreasonable and unwarranted reductions in the high-cost support distributed to CoLRs, and the consequent undermining of the quality and affordability of the CoLR services upon which their rural customers rely. The Rural Associations have proposed in comments with respect to the Further Notice of Proposed Rulemaking ("FNPRM") that the Commission take a data-driven approach to examining these issues that relies upon current and carefully validated data with respect to competitive service availability and pursuant to a well-defined process that permits adequate opportunity for all interested parties to establish whether any given area is in fact served in all respects by an "unsubsidized competitor."[10]

Given the clear significance of CoLR requirements to rural service and the need to ensure pursuant to law that consumers in high-cost areas have access to reasonably comparable services at reasonably comparable rates, and in light of the fact that many questions surrounding

---

[9] *Order* ¶ 15.

[10] Comments of the National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and Western Telecommunications Alliance, WC Docket No. 10-90, *et al*. (filed Jan. 18, 2012) at 80-82.

"unsubsidized competition" are pending further resolution in the FNPRM, the Commission should deny: (a) the portion of the ViaSat petition for reconsideration seeking qualification of satellite broadband providers as "unsubsidized competitors;"[11] (b) the portion of the WISPA petition for reconsideration seeking modification of the "unsubsidized competitor" definition so as to include standalone fixed broadband service providers;[12] and (c) the portion of the NTCH petition for reconsideration seeking redefinition of "unsubsidized competitor" to include mobile as well as fixed services.[13]

### A. Satellite Broadband Service Providers Should Not Be Included As "Unsubsidized Competitors."

ViaSat's assertion that satellite broadband providers should qualify as "unsubsidized competitors" because they can offer competitive broadband services[14] ignores: (a) the capacity constraints that prevent satellite providers from providing high-speed broadband services simultaneously to substantial numbers of customers; (b) the latency problems that preclude satellite providers from offering quality voice services; and (c) the weather and reliability problems that disrupt and degrade the quality of satellite voice and data services.

Geostationary satellite services can place signals to, and receive signals from, large portions of the United States. Whereas some locations may be blocked by buildings or natural obstructions, satellite services are theoretically capable of reaching most urban, suburban and rural locations within the United States, or at least within substantial regions of the country. The

---

[11] ViaSat, Inc. Petition for Reconsideration, WC Docket No. 10-90, *et al*. (filed Dec. 29, 2011) at 9-11 (*ViaSat Petition*).

[12] Petition for Partial Reconsideration of the Wireless Internet Service Providers Association, WC Docket No. 10-90, *et al.* (filed Dec. 29, 2011) at 4-8 (*WISPA Petition*).

[13] NTCH, Inc. Petition for Reconsideration, WC Docket No. 10-90, *et al.* (filed Dec. 29, 2011) at 3. (*NTCH Petition*)

[14] *ViaSat Petition* at 9.

problem is that, while millions of locations can be reached by satellite signals, only a small fraction thereof can be served during any given period without creating a massive traffic jam. In 2009, Commission data indicated that less than 3 percent of U.S. households subscribed to satellite broadband service, and that the average advertised download speed was approximately 1.2 megabits per second ("Mbps"), with actual download speeds likely to be significantly lower at peak times.[15] Should the number of households subscribing to satellite broadband service increase significantly, the capacity problems will worsen with resulting further adverse impacts upon satellite download and upload speeds. Put simply, satellite services are not technically capable of providing services in rural areas that are "reasonably comparable" to those available in urban areas because they lack the capacity to allow more than a relatively small percentage of their national or regional customers to share their bandwidth at the same time.

In addition to these critical capacity problems, state regulators have informed the Commission that they "have heard consumers complain about poor quality satellite-based broadband services" and that such complaints "have involved latency, [note omitted] which primarily affects the quality of voice communications, and sensitivity to weather, which affects both voice and data."[16] Voice service over geostationary satellite networks is subject to inherent, conversation-impairing delays of about 250 milliseconds caused by the need to transit lengthy earth-satellite and satellite-earth paths. In fact, ViaSat's affiliated WildBlue service does not currently offer voice service or support Voice over Internet Protocol ("VoIP") service.[17] Also, WildBlue admits that its customers may notice slower broadband speeds during rain and snow

---

[15] FCC, Broadband Performance: OBI Technical Paper No. 4 (published August 16, 2010) at 4, 13, 15, 21 and 24.

[16] *State Members' Comments* at 132-33.

[17] http://www.wildblue.com (visited February 6, 2012), including Frequently Asked Question No. 30.

showers.[18] Moreover, widespread reliance upon satellite networks has national security and reliability implications, for satellite networks depend upon a very limited number of critical facilities that are far more vulnerable than wireline networks to potential substantial and lengthy outages due to accidents (such as collisions with space debris), malfunctions, and the difficulty and expense of making repairs or deploying replacement satellites. Finally, even if consumers are willing to suffer through these technical and service quality shortcomings, they are often required to pay higher rates under multi-year contract commitments with data caps.

The Rural Associations recognize that satellite services may be a potential service option for reaching very remote and high-cost customer locations that do not have voice or broadband service at this time, and have no reasonable prospect of receiving quality and affordable terrestrial service within the foreseeable future. Moreover, satellite services are free to compete for business and residential customers in most or all urban, suburban and rural markets throughout the country; have the ability to generate substantial profits, as well as economies of scope and scale, from the more densely populated portions of their national or regional service areas; and are likely to have limited incentives to chase after the relatively immaterial revenues to be obtained from serving isolated households and population clusters in outlying rural areas that rely upon CoLR services.

The Commission reasonably and properly determined in the *Order* that capacity constraints warranted the exclusion of satellite providers from the definition of "unsubsidized competitor."[19] That conclusion was appropriate, particularly in light of the need to preserve the benefits of CoLR service from dilution via "unsubsidized competitors" that do not offer reasonably comparable service at reasonably comparable rates. This conclusion will remain

---

[18] *Id.*, Frequently Asked Question No. 31.

[19] *Order* ¶ 104.

proper for the foreseeable future, and the Commission can always revisit it at a more appropriate time if and when the record ever becomes clear as to the adequacy of satellite service as a meaningful competitive alternative in the furtherance of true universal service.

Therefore, the portion of the ViaSat reconsideration petition requesting qualification of satellite broadband providers as "unsubsidized competitors" should be denied.

### B. Standalone Fixed Wireless Broadband Service Providers Should Not Be Included As "Unsubsidized Competitors."

Standalone fixed wireless broadband services likewise fall short of ensuring a robust and full-service competitive alternative to COLRs. Indeed, WISPA itself notes that most of its wireless Internet service provider ("WISP") members offer only fixed wireless broadband services, and do not provide VoIP or other voice services.[20] WISPA confuses the private interest of its members in competing against qualified ETCs[21] with the public interest in ensuring that quality and affordable voice **and** broadband services are available on a CoLR basis to rural consumers. The answer is for WISPs to upgrade their networks and service offering to add quality voice services. It is not to inflate the definition of "unsubsidized competitor" to include partial service providers so as to reduce the support of those CoLRs with a proven record of providing quality and affordable voice and broadband services throughout their rural service areas.

Standalone fixed wireless broadband service providers are neither telecommunications service providers nor voice service providers. They have elected not only to sidestep federal and state telecommunications regulations and obligations, but also have declined to offer the voice

[20] *WISPA Petition* at 2.

[21] *Id.* at 6.

services that remain the principal defined services that are supported by Federal universal service support mechanisms pursuant to section 254(c)(1) of the Act.

Fixed wireless broadband service providers have the ability to become "unsubsidized competitors" by upgrading their networks to offer voice services that meet the minimum service eligibility standards set forth in revised section 54.101(a) of the Commission's Rules, 47 C.F.R. § 54.101(a), as well as other criteria that the Commission is likely to develop through the FNPRM. However, unless and until they offer the full complement of vital voice and broadband services provided by CoLRs and other eligible telecommunications carriers ("ETCs") and satisfy *all* applicable criteria in the Commission's rules, standalone fixed wireless broadband service providers should not be permitted to seek the reduction or elimination of the high-cost support furnished to CoLRs whose networks enable them to provide their essential voice services as well as broadband services.

Consequently, that portion of the WISPA reconsideration petition seeking modification of the "unsubsidized competitor" definition to include standalone fixed broadband service providers should be denied.

### C. Mobile Service Providers Should Not Be Included As "Unsubsidized Competitors."

NTCH asserts, without proof, that there are "many areas where [local exchange carriers] are subject to vigorous broadband competition from wireless carriers who provide predominately mobile service."[22]

Recognizing that fixed and mobile broadband technologies differ in some of their capabilities, the Commission in the *Order* adopted different performance benchmarks for fixed

---

22 *NTCH Petition* at 13.

(predominately wireline) and mobile wireless broadband services.[23] As the Commission stated, it is appropriate to limit reasonable comparability to "comparable services" to ensure "that fixed broadband services in rural areas are compared with fixed broadband services in urban areas, and similarly that mobile broadband services in rural areas are compared with mobile broadband services in urban areas."[24]

The *Order* established a separate Mobility Fund (including an initial Phase I for one-time construction support and a long-term Phase II for ongoing support) exclusively for mobile voice and broadband services.[25] The "unserved areas" for which Mobility Fund support is available are those areas that are not served by mobile wireless services as determined by American Roamer data.[26] The provision of fixed voice and/or broadband services within such areas does not adversely impact mobile wireless providers' eligibility for Mobility Fund support or reduce the amount of Mobility Fund support available for such areas.

The *Order* is not the first proceeding where the Commission has determined that mobile broadband services should be treated distinctly and differently from fixed broadband services because the two service technologies are not currently comparable or truly competitive. In its *Open Internet Order*, the Commission found that mobile broadband is in "an earlier stage of its development" than fixed broadband, and therefore subjected mobile broadband providers to less stringent blocking restrictions and exempted them entirely from unreasonable discrimination prohibitions.[27] The Commission reasoned that mobile broadband presented "special

---

[23] *Order* note 134.

[24] *Id.*

[25] *Id.* ¶ 295, *et seq.*

[26] *Id.* ¶ 334.

[27] *Preserving the Open Internet*, Report and Order, GN Docket No. 09-191 and WC Docket No. 07-52, 25 FCC Rcd 17905 (2010) ¶ 8.

considerations" regarding the application of Open Internet protections, *inter alia*, because "[m]obile broadband speeds, capacity, and penetration are typically much lower than for fixed broadband," and because "existing mobile networks present operational constraints that fixed broadband networks do not typically encounter."[28] Proponents of the wireless industry itself have long argued that mobile wireless services face technical limitations in keeping up with consumer needs and demands in the long-run – limitations that only highlight the need for a complementary approach to promoting fixed and mobile universal service.[29]

As the Rural Associations have indicated previously, the substantial majority of American businesses and households currently subscribe to both fixed and mobile voice and broadband services. The most recently available Commission data shows that during the period from the first half of 2007 through the second half of 2009, between 58.2 percent and 59.6 percent of U.S. households subscribed to both wireline and wireless telephone service.[30] Hence, fixed and mobile broadband services are primarily complementary rather than competitive services. Fixed and mobile broadband services utilize different equipment and technologies, and are presently used by customers for different purposes and at different times and places. For

---

[28] *Id.* ¶ 95.

[29] *See, e.g.,* An Open Letter to the USA Today Editorial Board from Steve Largent, President & CEO, CTIA-The Wireless Association (Aug. 19, 2010) ("You've heard us say that wireless is different. Due to the science and physics of spectrum use, there is only so much capacity that is available. This differs dramatically from landline and cable broadband service. One strand of fiber has more capacity than the entire electromagnetic spectrum. So even if we were able to get all the spectrum available in the U.S., we still wouldn't be able to have the same capacity as a single strand of fiber. To put it another way, it was recently stated that while the theoretical top speed of a LTE (a new wireless 4G technology) carrier is 100 Mbps, the theoretical transmission speeds on fiber can reach as high as 25,000,000 Mbps. That is a stark difference."); Joan Marsh, *Wireless Is Different*, AT&T Public Policy Blog (Aug. 13, 2010) (available at http://attpublicpolicy.com/government-policy/wirelessis-different/).

[30] Industry Analysis and Technology Division, Wireline Competition Bureau, Trends in Telephone Service (September 2010) at Table 7.4.

example, a businessperson may use fixed broadband services at work and at home where he or she can take advantage of larger screens and keyboards and higher speeds, and mobile broadband services while traveling and commuting and while attending the activities of children when he or she is willing to tolerate smaller screens and slower speeds for the sake of mobility. These usage differences, as well as trade-offs that customers are willing to make regarding speed, capacity, file size, screen size and mobility,[31] mean that fixed and mobile broadband facilities and services play separate but complementary roles at the present time and are most likely to continue to do so in the future.

In sum, the Commission has reasonably and correctly determined that fixed and mobile voice and broadband services are not comparable and competitive services at this time.[32] It has properly decided that the presence of an unsubsidized mobile voice and broadband service provider should not preclude or reduce high-cost support for a fixed voice and broadband service provider, just like the presence of a fixed voice and broadband service provider should not prohibit or reduce Mobility Fund support for an area that is not presently served by a mobile wireless voice and broadband service provider.

---

[31] Put another way, few people wish to watch the Super Bowl or participate in video conferences on their cell phones or portable computers, or to lug around substantial television screens or computer monitors in their vehicles.

[32] The disparate regulatory treatment of fixed and mobile services for purposes of compliance with the Commission's Open Internet policies as noted above is perhaps the most obvious example. Mobile wireless received favorable regulatory treatment precisely because it was not deemed robust enough to satisfy consumer-oriented expectations that apply to fixed broadband services. It would be an odd result indeed if mobile wireless –a service that was specifically given a "pass" from cornerstone consumer protections by this Commission because of technical shortcomings – were then treated as a functionally equivalent service from the consumer perspective for purposes of denying rural consumers universal access to the same quality of broadband that their urban counterparts receive.

As a result, the Commission should deny NTCH's redefinition request, and retain the current section 54.5 definition of "unsubsidized competitor" as a "facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support."

## II. THE COMMISSION SHOULD DENY VERIZON'S REQUEST FOR A GENERAL "TECHNICAL FEASIBILITY" EXEMPTION FROM THE NEW CALL SIGNALING RULES.

Verizon asks the Commission to reconsider its decision not to allow for technical feasibility or industry standards exceptions to the new phantom traffic rules or, at a minimum, delay the effective date of these rules.[33] Verizon claims the need for technical feasibility and industry standards exceptions to the new signaling rules has only increased as new technologies have emerged and the number of possible call flow routes has exploded. Verizon acknowledges that in some cases these limitations include significant call volumes.[34]

Verizon bases its request on essentially three claims. First, it asserts that many providers simply will not be able to comply with the rule and it would be inappropriate for the Commission to expect carriers to make significant changes to call signaling practices for intercarrier billing purposes where any investment in the technology and equipment necessary to do so would be wasted after just a few years.[35] Second, Verizon asserts the *Order* fails to account for the fact that carriers have developed adequate work-arounds for gaps in call signaling information, including reliance on jurisdiction-based usage factors for traffic sent without call signaling information. Verizon further asserts many tariffs and interconnection agreements include so-called "incentive arrangements" – *e.g.*, "rating traffic without calling party number data at

---

[33] Verizon and Verizon Wireless Petition for Clarification or, in the Alternative, for Reconsideration of Verizon, WC Docket No. 10-90, *et al*. (filed Dec. 29, 2011) at 8-12 (*Verizon Petition*).

[34] *Id.* at 9.

[35] *Id.* at 10.

intrastate rates to encourage carriers to populate this field in the call signaling stream where it is technically feasible and cost-effective to do so."[36] Verizon also asserts the entire call signaling rule is unnecessary because the Commission's larger intercarrier compensation goal is to transition to a bill-and-keep regime in which intercarrier compensation payments are eliminated entirely, and at that point all data in the call signaling stream used for intercarrier billing purposes will be "unnecessary and useless."[37] Verizon argues that therefore the entire rule should be reconsidered.

Contrary to Verizon's assertions, call signaling rules are necessary now and will remain so for at least the next nine or so years while access charges and reciprocal compensation remain applicable. Indeed, the Commission did not go far enough in prescribing new call signaling rules.[38] While ICC charges continue to apply, carriers will continue to need accurate and timely call detail information transmitted in the call signal to render accurate bills. If the "work-arounds" to which Verizon refers were adequate, the Commission and the industry would not be faced with hundreds of disputes over phantom traffic.

Verizon provides very few, and somewhat thin, examples of cases where providers will be unable to comply with the new rules. For example, it claims some switches deployed by wireline carriers were not designed to populate a charge number ("CN") field in the signaling stream on intraLATA calls, and suggests that "there are many situations where carriers have never before had arrangements to populate these fields because the data are not needed."[39] Verizon, however, provides only one example of such situations involving its own "on network"

---

[36] *Id.* at 10-11.

[37] *Id.* at 10.

[38] *See, e.g., NECA, OPASTCO, WTA Petition* at 35-36.

[39] *Verizon Petition* at 9.

calls. Verizon also claims it has negotiated business-to-business arrangements with other carriers to modify or remove CN information – "not for any deceptive purpose but so that the receiving carrier's switch will be technically capable of accepting the traffic."[40] In these cases, however, the terminating carrier has presumably agreed to this practice and has made mutually-acceptable billing arrangements with Verizon.[41] Put simply, it is very clear from the examples that Verizon employs that missing call signaling data is not a significant problem with respect to calls originating and terminating on Verizon's own network or on the networks of carriers who have made mutually-acceptable billing arrangements with Verizon.

In adopting revised call signaling rules the Commission wisely declined to include any general technical infeasibility exemption, finding that such an exception "would have the potential to undermine the rules."[42] For cases where the burden of updating legacy equipment or systems would impose significant hardship, the Commission has provided an opportunity for carriers to request waiver of the rules. Indeed, other carriers –including AT&T and CenturyLink – have already sought such waivers, and the Rural Associations agree such petitions should be given consideration by the Commission on a very limited basis.[43]

The call signaling portion of Verizon's petition for reconsideration should accordingly be denied. An open-ended "technical infeasibility" exception to the call signaling rules would

---

[40] *Id.*

[41] The Commission should be especially wary of claims that new technologies and/or an "explosion of new call flow routes," *see id*. at 9, justify exemption from new call signaling rules. It is highly doubtful any of the modern switching equipment involved in such calls would be "technically incapable" of passing accurate call signaling data. Grant of an exemption to carriers utilizing such technology would completely eviscerate the effectiveness of the Commission's rule.

[42] *Order* ¶¶ 721-23.

[43] *See* Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90, *et al.* (filed Feb. 9, 2012).

create an enormous loophole in the Commission's rules, particularly given that Verizon itself acknowledges that significant call volumes are involved. Such a major loophole would subvert the purpose of the rule itself by creating perverse incentives for carriers to claim technical infeasibility in order to continue sending phantom traffic and avoid the payment of appropriate intercarrier compensation. To the extent that compliance with the signaling rule would impose significant hardship on Verizon (a fact that does not appear to be the case in light of Verizon's inability to find examples of call signaling problems on its own network), Verizon should be encouraged to seek limited, temporary waivers focused on situations where such relief is demonstrably needed temporarily to allow Verizon to come into compliance.

Alternatively, the Commission could adopt the Rural Associations' original suggestion for resolving disputes over unidentified traffic by placing financial responsibility for such traffic on the last carrier in the sending call stream.[44] In its *Order*, the Commission expressed concern this approach would unfairly burden tandem transit and other intermediate providers and likely generate confusion additional phantom traffic disputes.[45] As the Verizon petition illustrates, however, allowing "technical feasibility" exemptions to the Commission's signaling rules is equally likely (if not more likely) to generate confusion and additional disputes. The Rural Associations' proposal addresses these problems directly, by allowing terminating carriers to charge their highest effective rate to the service provider delivering such unlabeled traffic. A carrier, such as Verizon, with non-compliant end offices would then have an incentive to fix such problems where it is cost-effective to do so, or simply pay the higher rate. If the sending carrier has accepted traffic from some other carrier, it would be able to charge that rate to the service

[44] Comments of NECA, NTCA, OPASTCO, WTA, ERTA, Rural Alliance, and Rural Broadband Alliance, WC Docket No. 10-90, *et al.* (filed Apr. 1, 2011) at 26-27.

[45] *Order* ¶ 731.

provider that preceded it in the call path, until ultimately the carrier that improperly labeled the traffic would be required to pay for its own traffic. In any case, this approach would assure the entity responsible for failure to comply with the Commission's signaling rules would fairly bear the costs of such non-compliance, instead of transferring such costs to the terminating carrier. In addition, by reducing or eliminating concerns over non-payments, this approach will significantly reduce upward pressure on the CAF ICC Support mechanism.[46]

In sum, the Commission should either require passage of carrier identifying information necessary to establish with certainty the financially responsible party for a call, or it should allow terminating carriers to bill the carrier or provider sending the calls to them at their highest effective rate when those calls fail to carry sufficient call signaling information to allow for proper billing. In any event, the Commission should not reconsider its decision not to grant general "technical infeasibility" or "industry standards" exemptions from its new signaling rules as Verizon requests.

## III. THE COMMISSION SHOULD DENY USTelecom's REQUEST FOR THE CAPPING OF INTRASTATE ORIGINATING ACCESS CHARGES AND RESOLVE VOIP-RELATED ORIGINATING ACCESS ISSUES.

The Commission should reject that portion of the USTelecom reconsideration petition that calls for capping RLEC originating intrastate access charges at current rates as of the effective date of the rules.[47] USTelecom makes the conclusory assertion that there is "no evidence" that RLECs would be financially harmed by capping their originating intrastate access charges.[48] Yet, it offers no indication that it has attempted to determine whether this is true in a time of general economic uncertainty as well as threats to critical RLEC revenue streams.

[46] *NECA, OPASTCO, WTA Petition* at 39.

[47] Petition for Reconsideration of the United States Telecom Association, WC Docket No. 10-90, *et al*. (filed Dec. 29, 2011) at 39 (*USTelecom Petition*).

[48] *Id.*

Indeed, it is noteworthy that USTelecom has consistently urged the Commission throughout these proceedings to ensure the availability of a meaningful ICC recovery mechanism to avoid causing harm in undertaking ICC reform.[49] USTelecom provides neither a principled basis nor any justification at all to depart from this basic tenet here.

As set forth in the original "RLEC Plan" for USF and ICC reform filed in April 2011, and despite subsequent modifications made to the plan in the "Consensus Framework" compromise with the price cap carriers,[50] the Rural Associations would have preferred that the Commission address originating access rates within the initial reforms.[51] The Commission chose, however, not to address the transition and restructuring path for RLEC originating access (beyond capping interstate originating access rates) as part of those initial reforms.[52]

Given that the Commission has selected section 251(b)(5) of the Communications Act as its primary path for implementing ICC reform,[53] it is not clear what legal authority it might have to cap intrastate originating access rates. Even if federal-state jurisdictional issues can be resolved, there is still the issue of the continuing ability of RLECs to provide quality and affordable voice and broadband services to their rural customers if their revenue streams are further capped or reduced. Consistent with the very arguments that USTelecom has made elsewhere throughout this proceeding with respect to ICC reform, the service capabilities of

---

[49] *See, e.g.,* Letter from Jonathan Banks, USTelecom, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al*. (filed Oct. 21, 2011) ("Reducing revenues without providing reasonable transitions and opportunities that are adequate to recover those revenues will inevitably affect investment levels and the delivery of broadband services in higher cost areas").

[50] *See* Letter from Walter B. McCormick, Jr., United States Telecom Association, *et al.*, to Chairman Genachowski, FCC, WC Docket No. 10-90, *et al.* (filed July 29, 2011).

[51] *See Rural Associations April 18, 2011 Comments* at 7.

[52] *Order* ¶ 805.

[53] *Id.* ¶ 738.

RLECs will be impaired if their originating intrastate access rates are capped without the resulting revenue losses being replaced by additional support from a Recovery Mechanism. The Commission should therefore not reconsider its decision to refrain from capping RLEC originating intrastate access rates unless or until it is also prepared to provide additional support above the present $2.0 billion RLEC budget target for such mandatory rate caps through the Recovery Mechanism.

On a related note, it is important that the Commission eliminate any potential ambiguity in its rules regarding the scope of "VoIP-PSTN traffic" in the context of originating access charges.[54] Specifically, to avoid arbitrage opportunities, the Commission should confirm that the *Order* does not require the application of reduced originating access rates for PSTN-originated calls that terminate to customers who may be served by VoIP facilities. The Commission made clear in section XII.C.3 of the *Order* that there would be no disruption now to any originating access charge structures beyond *capping* those rates in certain specifically defined cases. As noted above, the *Order* is also clear that the determination not to address originating access charges was driven in significant part by budgetary considerations. Reading the discussion in section XIV.C of the *Order,* regarding prospective intercarrier compensation obligations for VoIP-PSTN traffic, to compel a "flash cut" reduction of originating access charges for certain kinds of traffic would be contrary to the broad structure of the *Order* and *FNPRM*, and would substantially increase demand on the Recovery Mechanism. The Commission should therefore reaffirm that, with respect to the rates applicable to termination of VoIP-PSTN traffic, section XIV.C of the *Order* is not and was never intended to contradict the clear determination that

[54] *See USTelecom Petition* at 34-35; Windstream Communications and Frontier Communications Petition for Reconsideration and/ or Clarification, WC Docket No. 10-90, *et al*. (filed Dec. 29, 2011) at 21-24.

originating access charge reductions and recovery thereof would be addressed entirely through further rulemaking.[55]

## IV. HIGH COST SUPPORT SHOULD NOT BE CONDITIONED UPON THE UNIFICATION OF RURAL AND URBAN ACCESS RATES.

The Commission should reject the request by NTCH that RLECs accepting high-cost support be required to cap their access charges at levels comparable to those charged in urban areas.[56] As an initial matter, this request is simply baffling in nature, as it seems to ignore the fundamental fact that the costs of providing service in different areas will necessarily differ. Rural areas are "high cost," no matter how much NTCH or others may wish this were not the case.

Beyond this straightforward logical shortcoming, NTCH's request demands action that is squarely contrary to the Commission's "measured transition" toward comprehensive reform. Much like others who call for accelerated rate reductions of one kind or another, NTCH would disregard the need to balance access rate reductions with the management of the size of the Recovery Mechanism. Whereas the Rural Associations have sought reconsideration or review of certain aspects of the Commission's ICC rule changes, they have recognized and supported the

---

[55] The Rural Associations also oppose USTelecom's suggestion that the Commission "clarify" prior state decisions to suspend or modify interconnection obligations under section 251(f)(2) of the Act do not extend to the Commission's new intercarrier compensation regime. *USTelecom Petition* at 37-38. The *Order* discusses possible impacts of future state suspension or modification decisions on the Commission's overall ICC reform efforts but, in view of the "limited record" on the subject, the Commission declined to adopt specific *prospective* rules regarding section 251(f)(2) decisions. *Order* ¶ 824. Instead, the Commission indicated it would monitor state actions and "may provide specific guidance for states' review of section 251(f)(2) petitions in the future." Accordingly, there is no basis whatsoever for the Commission to clarify at this point that *prior* state decisions should automatically be invalidated under the new ICC regime. To the contrary, the Commission should monitor impacts of such modifications on an individual basis to determine what impacts, if any, such actions might have on reform going forward.

[56] *NTCH Petition* at 11.

fact that the Commission's transition path and associated Recovery Mechanism are intended to moderate the potentially adverse effects on consumers and carriers of moving too quickly from existing ICC rates.[57] By contrast, in addition to ignoring the fundamental fact that some costs are simply higher in some areas, the NTCH approach would amount to the very "flash cut" the Commission has sought to avoid, and create substantial new pressures both on the size of the Recovery Mechanism and the ability of carriers and consumers to adjust to the Commission's mandated reductions.

Consequently, this portion of the NTCH petition for reconsideration should also be denied.

## V. CONCLUSION.

The Commission should affirm its decision not to pre-empt or otherwise modify state CoLR regulation and should preserve the broadly recognized benefits of CoLR regulation by denying those portions of the reconsideration petitions of ViaSat, WISPA and NTCH that seek expansion of the definition of "unsubsidized competitor" to include satellite broadband providers, standalone fixed wireless service providers, and mobile wireless service providers, respectively. It should retain the current section 54.5 definition of "unsubsidized competitor" as a "facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support."

The Commission should also confirm its decision not to include any general "technical infeasibility" exemption in its revised call signaling rules, and recognize that accurate and timely call detail information will need to be transmitted in call signals to allow for the rendering of accurate bills for at least the next nine years while ICC charges continue to apply. It should deny

[57] *Order* ¶ 801.

the portion of the Verizon reconsideration petition that would eviscerate the new phantom traffic rules by creating loopholes in the form of "technical feasibility" or "industry standards" exceptions to call signaling requirements.

The Commission should also deny the portion of the USTelecom reconsideration petition that calls for the capping of RLEC intrastate originating access charges at current rates. Even if the Commission determines that it has jurisdiction to take this step, it should do nothing at this time to further cap or reduce RLEC revenue streams without providing additional high-cost support above the current $2.0 billion RLEC budget target.

Finally, the Commission should deny the portion of the NTCH reconsideration petition that asks, without support or consideration of the consequences, that RLECs accepting high-cost support be required to "cap" their access charges in a "flash cut" manner at the much lower levels charged in urban areas.

Respectfully submitted,

WESTERN TELECOMMUNICATIONS ALLIANCE
By: /s/ Derrick Owens
Derrick Owens
Vice President of Government Affairs
317 Massachusetts Avenue N.E.,
Ste. 300C
Washington, DC 20002
(202) 548-0202

Gerard J. Duffy
Regulatory Counsel for
Western Telecommunications Alliance
Blooston, Mordkofsky, Dickens, Duffy &
Prendergast, LLP
2120 L Street NW (Suite 300)
Washington, DC 20037

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.
By: /s/ Richard A. Askoff
Richard A. Askoff
Linda A. Rushnak
Its Attorneys
Teresa Evert, Senior Regulatory Manager
80 South Jefferson Road
Whippany, NJ 07981
(973) 884-8000

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION
By: /s/ Jill Canfield
Jill Canfield
Director, Legal and Industry
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

ORGANIZATION FOR THE PROMOTION
AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS
COMPANIES
By: /s/ Stuart Polikoff
Stuart Polikoff
Vice President – Regulatory Policy and
Business Development
2020 K Street, NW, 7th Floor
Washington, DC 20006
(202) 659-5990

February 9, 2012