

Public Notice² released by the Wireline Competition Bureau (“Bureau”) seeking comment on the Petition for Extension of Time filed by the Associations and several other parties.³

The Petition requested a delay in implementation of the 2014 local service rate floor⁴ from July 1, 2014 to January 2, 2015, as well as corresponding changes to the dates thereafter for any annual or mid-year updates to rate floor levels.⁵ The Public Notice in turn asked for comment both on the delay proposed by the Petition and on a potential phase-in of the local rate floor,⁶ as well as “any alternative approaches that would protect consumers while ensuring swift implementation of the statutory obligation of [the Commission] to ensure reasonably comparable rates.”⁷

I. THE BUREAU SHOULD IMMEDIATELY DELAY IMPLEMENTATION OF ANY INCREASE IN THE LOCAL RATE FLOOR AS REQUESTED BY THE PETITION AND THE COMMISSION SHOULD THEN REVIEW THE RATE FLOOR POLICY.

The instant proceeding, including the filing of the instant Petition, has been necessitated by a sizeable and unanticipated increase in the local service rate floor in the wake of the urban rate survey conducted by the Bureau. No oppositions were filed to the Petition. In the near term, immediate grant of the Petition has become all the more essential in light of the ensuing delay in

² Wireline Competition Bureau Announces Results of Urban Rate Survey for Voice Services; Seeks Comment on Petition for Extension of Time to Comply with New Rate Floor, WC Docket No. 10-90, Public Notice, DA 14-384 (rel. Mar. 20, 2014) (“Public Notice”).

³ Petition for Extension of Time by ERTA, ITTA, NECA, NTCA, USTelecom and WTA, WC Docket No. 10-90 (filed Mar. 11, 2014) (“Petition”).

⁴ See 47 C.F.R. § 54.318(f).

⁵ To be in compliance with the July 1, 2014 rate floor, carriers must certify to rates in effect as of June 1, 2014.

⁶ See Public Notice at 3.

⁷ *Id.*

finalizing and publicly announcing the rate increase that will be required for the next local rate floor compliance filing.

Indeed, even if the Commission or the Bureau were to release an order almost immediately following receipt of comments in response to the Public Notice, carriers would be required to complete all steps necessary to implement such a local rate increase and avoid the loss of high-cost support in less than 60 days. As the Petition highlighted, such steps are likely to include requests for approval by state regulatory bodies, notifications to consumers, and/or votes by cooperative boards of directors.⁸ These steps would require expedited proceedings by state commissions, significant and rushed work by all affected carriers to prepare any necessary filings, and hurried updates to billing systems to implement the new local rate throughout consumers' invoices. Moreover, in a number of states, no expedited proceeding would be available, and even rate increases of a smaller size that might be associated with any "phase-in" of the current rate floor could still require full-blown rate cases that would take months or longer to complete.⁹ Thus, these steps will be impossible to achieve in some states within the next 60 days, and extending the deadline for potential compliance to at least the end of the year, if not beyond, would give carriers, states, and, most importantly, consumers more time to adjust to whatever rate floor policy the Commission reviews and adopts.¹⁰ Thus, an immediate delay as

⁸ See Petition at 2, 3.

⁹ See, e.g., *id.* at n. 12 (listing the process requirements for local voice rate increases in a series of states).

¹⁰ As part of any potential revisiting of the rate floor policy as discussed further below, the Commission should consider adopting a "force majeure"-type rule that ensures that a carrier will not face shortfalls in support as a result of the application of the rate floor to the extent that the carrier has made and will continue to make reasonable and diligent efforts to pursue rate increases of the scope required but faces the prospect of prolonged state regulatory processes in connection with such rate increases.

requested by the Petition is warranted as both a practical matter and as a matter of reasonable consumer protection.

Moreover, the requested delay would give the Commission a reasonable and necessary period of time within which to revisit the fundamental operation of the rate floor and take a measured, carefully thought out approach to any further implementation and phase-ins. As the Associations have highlighted in the past, universal service policy must be aimed at ensuring “reasonable comparability” between rural and urban rates.¹¹ This does not mean, however, that every rural consumer must pay at least the urban average rate for local voice service. Indeed, the Commission’s rules expressly contemplate that there is a range within which rates would be considered “reasonably comparable,” and has set a rate that is actually quite far *above* the urban average rate that rural rates may reach and still be “reasonably comparable.”¹² Since the “rate ceiling” for rural areas need not equal the urban average rate on a penny-for-penny basis, but can instead float at some statistically acceptable level above urban rates, there is no logical reason that the “rate floor” must be set precisely at the urban average rate, with penalties for failure to do so.

Indeed, in further considering this issue through the prism of consumer protection, the Commission should take into account the steep increases consumers would be expected to bear

¹¹ See, e.g., Petition for Reconsideration and Clarification of NECA, *et al.*, CC Docket No. 01-92, *et al.*, at 13-14 (filed Dec. 29, 2011); *Ex Parte Letter* of Shirley Bloomfield, Chief Executive Officer of NTCA, to Chairman Thomas Wheeler, FCC, WC Docket No. 10-90, *et al.*, at 1-2 (filed Mar. 21, 2014); *Ex Parte Letter* of Michael R. Romano, Sr. Vice President-Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et al.*, at 1 (filed Mar. 11, 2014).

¹² See 47 C.F.R. § 54.313(a)(10); see also Public Notice at 2 (“To be consistent with section 254(b) of the Communications Act, the Commission also determined that ‘ETCs must offer voice telephony service, including voice telephone service offered on a standalone basis, at rates that are reasonably comparable to urban rates,’ and it adopted a presumption that ‘a voice rate is within a reasonable range if it falls within two standard deviations above the national average.’”) (internal citations omitted).

over a short period of time, even under some potential phase-ins. Previously, the Commission has recognized and taken steps to minimize drastic increases in rates. For example, in the USF/ICC Transformation Order the Commission stated that in order to “minimize the consumer burden, we limit increases in the monthly consumer ARC to \$0.50 per year.”¹³ Such concerns would seem of equal force in the current instance where rural Americans are facing rate increases that could result in considerable financial harm, particularly when considered atop other recent rate increases and the still-escalating ARC charges.

Thus, the Commission and the Bureau can and should take the time afforded by the delay in the implementation of any increases requested by the Petition to: (1) evaluate what reasonable comparability truly means for rural rates as a measure both above *and* below urban average rates; (2) release publicly the data obtained via the urban rate survey to enable validation of the Bureau’s calculations;¹⁴ and (3) to the extent that the rate floor policy would be retained

¹³ 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, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011), ¶ 909 (“USF/ICC Transformation Order”)

¹⁴ Transparency in revealing how urban rate survey data were used to establish the new local rate floor is essential. The Public Notice provides no detail on how the Bureau arrived at its result, other than to note that it was based on a survey of rates for 500 urban census tracts. *See* Public Notice at 2. No information is provided as to how many of the 500 responded to the survey, what data were included in the rate calculation or what efforts were undertaken by the Bureau to validate the data provided. It is not even clear whether the new rate floor was calculated as a straight average or a weighted average. It is simply astonishing that the Commission would permit the rate floor to increase by more than 40% -- with dramatic impacts on consumers nationwide – on the basis of a single conclusory paragraph contained in a Public Notice. At a minimum, the Bureau should be required to make available the data and methods underlying its calculations, including census tract information and the methodology used to calculate the new rate floor. Given the magnitude of the impacts associated with this number, the Commission

following such review, determine whether this policy should be reoriented to more properly and faithfully ensure true reasonable comparability – including giving more measured (rather than rushed) thought as to what level of phase-in might be appropriate¹⁵ before foisting significant rate increases on rural consumers in a short period of time.¹⁶

As part of such an evaluation, particularly as it relates to the issue of “reasonable comparability,” the Associations strongly urge the Commission and Bureau to perform a review of the current status of the economy in rural areas, including consideration of the widening gap in cost of living standards between rural and urban areas.¹⁷ Following this review, to the extent the rate floor policy is perpetuated, the Commission could announce the rate floor for implementation on a schedule as requested by the Petition.

may well wish to conduct further proceedings before a new rate floor based on these data is allowed to take effect.

¹⁵ *Supra*, note 13. (“To minimize the consumer burden, we limit monthly increases in the monthly consumer ARC to \$0.50 per year.”)

¹⁶ As part of this further review, the Commission should specifically consider the impact of serially escalating local voice rates on consumers who, when they elect to cease purchasing such voice service, then face the prospect of increased broadband rates for having made that choice. Targeted, tailored updates to the universal service rules to remedy this shortcoming have been a priority of the Associations for nearly eighteen months now, and resolution of this issue becomes all the more important as the rate floor policy has an increasing impact on consumers. *See* Petition of NTCA for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, GN Docket No. 12-353, at 15 (filed Nov. 19, 2012) (“NTCA IP Evolution Petition”); Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No 10-90 *et al.*, at 32 (filed Jan. 18, 2012); Comments of NTCA, NECA, WTA, and ERTA, WC Docket No. 10-90 (filed June 17, 2013) Reply Comments of NTCA, NECA, WTA, and ERTA, WC Docket No. 10-90 (filed July 15, 2013).

¹⁷ *See* Statement of Commissioner Pai Opposing FCC-Initiated Increase in Rural Americans’ Phone Bills, News Release (rel. Mar. 20, 2014).

II. DELAYING THE ANNUAL INCREASE IN THE LOCAL RATE FLOOR DOES NOT AFFECT FUND SIZE OR THE USF CONTRIBUTION FACTOR.

There is no connection between the overall high-cost fund budgetary target adopted in the USF/ICC Transformation Order¹⁸ and local voice rate increases. The local rate floor was adopted based on concerns about fairness and to comply with the reasonable comparability standard in the statute.¹⁹ To the extent carriers implement the required rate floor, these increases in local rates do not affect the overall size of the high-cost fund, nor do they affect the Universal Service Fund contribution factor. Therefore, delaying the annual increase in the local rate floor and undertaking a further review of the policy affects neither payers into the Universal Service Fund nor the overall budget of the high-cost fund.

III. CONCLUSION

The Commission or the Bureau, as applicable, should promptly delay implementation of the local service rate floor requirement as proposed by the Petition – that is, delay certification until, at a minimum, January 2, 2015, for rates in effect December 1, 2014. The Commission should then use the additional time to re-evaluate the rate floor policy in light of the need to

¹⁸ See USF/ICC Transformation Order ¶ 125.

¹⁹ See *id.* ¶¶ 234-238, and 47 U.S.C. 254(b).

ensure fairness to all consumers and to fulfill more precisely the Commission's obligation to ensure reasonably comparable rates.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Reply Comments was served this 31st day of March, 2014 by electronic filing and e-mail to the persons listed below.

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