

**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

**EMERGENCY PETITION FOR WAIVER
OF
NTCA–THE RURAL BROADBAND ASSOCIATION,
THE NATIONAL EXCHANGE CARRIER ASSOCIATION,
ITTA,
THE EASTERN RURAL TELECOM ASSOCIATION,
WTA–ADVOCATES FOR RURAL BROADBAND,
FRONTIER COMMUNICATIONS CORPORATION, AND
WINDSTREAM COMMUNICATIONS, INC.**

I. INTRODUCTION AND BACKGROUND

NTCA–The Rural Broadband Association (“NTCA”), the National Exchange Carrier Association (“NECA”), ITTA, the Eastern Rural Telecom Association (“ERTA”), WTA–Advocates for Rural Broadband, Frontier Communications Corporation, and Windstream Communications, Inc. (collectively “Petitioners”) hereby submit this emergency petition for

waiver of Section 51.913(a)¹ of the rules of the Federal Communications Commission (“Commission”). This petition for waiver is submitted pursuant to Section 1.3 of the Commission’s rules.²

For the reasons discussed below, Petitioners request that the Commission waive the application of Section 51.913(a) of its rules and thereby pause, effective June 30, 2014, any reductions in intercarrier compensation (“ICC”) rates for originating intrastate toll Voice over Internet Protocol (“VoIP”) traffic³ until full implementation of the Connect America Fund (“CAF”) Phase II mechanism, in the case of price cap carriers, or a tailored CAF mechanism for rural, rate of return-regulated carriers (“RLECs”), respectively.⁴ The petitioners recognize that such rate reductions were effective on July 1, 2014. But for the reasons set forth herein, the applicable rates should be restored to their levels as of June 30, 2014 as soon as possible and remain at such levels until after the implementation of CAF Phase II and an RLEC CAF, respectively.

In the *2011 USF/ICC Transformation Order*,⁵ the Commission initiated a transition to bill-and-keep for telecommunications traffic exchanged with local exchange carriers (“LECs”),

¹ 47 C.F.R. § 51.913(a).

² 47 C.F.R. § 1.3.

³ This traffic is also referred to in Section 51.913(a) of the Commission’s rules as “intrastate originating Access Reciprocal Compensation . . . exchanged between a local exchange carrier and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format.” *See* 47 C.F.R. § 51.913(a)(2).

⁴ More specifically, the “pause” in these rate reductions should occur on separate tracks. Thus, RLECs’ rates for originating intrastate toll VoIP traffic should remain at June 30, 2014 levels until adoption and full implementation of a CAF mechanism specifically designed for the unique needs of these carriers. Price cap carriers’ rates for originating intrastate toll VoIP traffic should remain at June 30, 2014 levels until implementation of the CAF Phase II mechanism in the form of an extension of potential model-based support to such carriers.

⁵ *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.

and addressed, in part, “VoIP-PSTN” traffic. In response to the *Transformation Order*, the Rural Associations⁶ and Frontier-Windstream⁷ filed Petitions for Reconsideration, asking the Commission to clarify that “the Order does not apply to, and is not intended to displace, intrastate originating access rates for PSTN-originated calls that are terminated over VoIP facilities.”⁸ In their petitions, Frontier-Windstream and the Rural Associations noted that the *Transformation Order* by its explicit terms applied rate reductions *only* to terminating access rates.⁹ To reiterate briefly here, the Commission stated in the *Transformation Order* that the “transition plan first focuses on the transition for terminating traffic, which is where the most acute intercarrier compensation problems, such as arbitrage, currently arise.”¹⁰ The *Transformation Order* further noted that “limiting reductions at this time to terminating access rates will help address the majority of arbitrage and manage the size of the access replacement mechanism.”¹¹ Moreover, the Commission specifically stated that it declined to cap RLECs’ originating intrastate access rates due to concerns as to the size of the recovery mechanism.¹² Finally, the Commission went on to state that the transition of originating access charges to bill-

07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing a 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) (“*2011 USF/ICC Transformation Order*” or “*Transformation Order*”).

⁶ NECA, OPASTCO, WTA Petition for Reconsideration and Clarification, WC Docket No. 10-90, *et al.*, at 34 (filed Dec. 29, 2011) (“Rural Associations Petition”).

⁷ Frontier Communications Corp. and Windstream Communications, Inc., Petition for Reconsideration and/or Clarification, WC Docket Nos. 10-90, *et al.*, at 12-20 (filed Dec. 29, 2011) (“Frontier-Windstream Petition”).

⁸ *Id.*, p. 21.

⁹ *Transformation Order*, ¶¶ 35, 800.

¹⁰ *Id.*, ¶ 800.

¹¹ *Id.*

¹² *Id.*, ¶ 805.

and-keep was the subject of the Further Notice of Proposed Rulemaking that accompanied the *Transformation Order*.¹³

While the Commission declined to grant the specific relief sought by the Petitions for Reconsideration, it acknowledged in the *Second Order on Reconsideration* the uncertainty created by the *Transformation Order* as to the default origination charges for the traffic in question.¹⁴ As a result, the Commission permitted LECs to “tariff default charges equal to intrastate originating access for originating intrastate toll VoIP traffic (including traffic that originates in IP, terminates in IP, or both) at intrastate rates until June 30, 2014.”¹⁵

II. SPECIAL CIRCUMSTANCES AND THE PUBLIC INTEREST SUPPORT IMMEDIATE GRANT OF THE REQUESTED EMERGENCY WAIVER

Section 1.3 of the Commission’s rules states that “rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.”¹⁶ The “good cause shown” standard has been interpreted to grant the Commission discretion to waive application of its rules in situations where strict compliance would not be in the public interest. Generally, waiver of the Commission's rules is granted when both (i) special circumstances

¹³ *Id.*

¹⁴ *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 a 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, Second Order on Reconsideration (rel. Apr. 25, 2012) (“*Second Order on Reconsideration*”), ¶ 31.

¹⁵ *Id.*, ¶ 30.

¹⁶ 47 C.F.R. § 1.3.

warrant a deviation from the general rule and (ii) such deviation will serve the public interest.

As demonstrated more fully below, both prongs of the Commission's waiver standard are met in this instance.

In both the *Transformation Order* and the *Second Order on Reconsideration* the Commission aimed to strike a careful balance between its desire to transition ICC to bill-and-keep and the disruption that such action could create. As to the latter, the Commission responded by creating a recovery mechanism, stating that it was designed “to provide predictability to incumbent carriers, . . . mitigate marketplace disruption during the reform transition, and . . . [avoid] unintentionally undermin[ing] [the Commission's] objectives for universal service reform.”¹⁷ In other words, the Commission adopted a multi-year transition of certain ICC rates and created a recovery mechanism to avoid a “flash-cut” to a critical portion of LECs' revenue streams. This important balance can also be seen in the Commission's desire to avoid creating a recovery mechanism that would prove burdensome to the consumers that ultimately bear the responsibility for funding it. While the *Second Order on Reconsideration* delayed the reduction in intercarrier compensation rates for originating intrastate toll VoIP traffic until June 30, 2014, an accompanying recovery mechanism remains to be developed.

In both the *Transformation Order* and the *Second Order on Reconsideration* the balance struck by the Commission in defining the parameters of the ICC rate transition (including the determination to consider originating rate reductions at a later date) and its accompanying recovery mechanism, is imbued with the assumption that reorientation of the Universal Service Fund for a broadband world would be well underway by 2014 and that CAF programs would be operational by this point. Indeed, the *Transformation Order* specifically stated that the CAF

¹⁷ *Transformation Order*, ¶ 858.

Phase II mechanism was expected to begin by January 1, 2013.¹⁸ The accompanying further notice sought comment on a CAF mechanism for RLECs – a concept on which the Commission is now seeking comment for the third time in the past thirty months.¹⁹

In short, the entirety of the *Transformation Order* “represents a careful balancing of policy goals, equities, and budgetary constraints.”²⁰ The *Second Order on Reconsideration* further observed that a delay to July 1, 2014 was appropriate in large part because it fell (at the time) “within our uniform, comprehensive national framework for comprehensive intercarrier compensation reform” that would give carriers “the opportunity to make significant progress transitioning their business plans away from excessive reliance on intercarrier compensation.”²¹ The Commission has even more explicitly observed that the ICC mechanisms and high cost universal service mechanisms “have long been intertwined,”²² and that “[t]he CAF will also help

¹⁸ *Id.*, ¶ 148.

¹⁹ *Connect America Fund*, WC Docket No. 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54 (rel. June 10, 2014).

²⁰ *Second Order on Reconsideration*, ¶ 1.

²¹ *Id.*, ¶ 36.

²² *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 a 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, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011), ¶ 45.

facilitate our ICC reforms.”²³ The successful reform of either (including, in particular, any reduction of ICC rates) depends on the Commission continuing to be mindful of that link.²⁴

As a case in point, and to highlight the impact of the rate reductions at issue in the instant petition, to the extent that calls originating on LEC networks to VoIP customers within the same state tracked to FCC monitoring data showing that approximately 30 percent of voice connections are at this point VoIP in nature,²⁵ the estimated annual revenue shortfall for RLECs would exceed \$18.5 million. For Frontier Communications and Windstream Communications, again making the same assumptions as to the percentage of voice connections that are at this point VoIP in nature (30 percent), the estimated annual revenue shortfall for these two price cap carriers alone would be \$14.5 million.

Special circumstances and the public interest thus support waiver of Section 51.913(a) of the Commission’s rules. Such a waiver is essential to maintain the careful balance that the Commission attempted to strike in the *Transformation Order*. In denying the Rural Associations and Frontier-Windstream petitions for reconsideration, the Commission in the *Second Order on Reconsideration* could not have anticipated that essential CAF programs would still not be in place more than two years later. The special circumstances required by rule 1.3 thus exist.

²³ *Transformation Order*, ¶ 20.

²⁴ Indeed, as the Petitioners have previously noted, there is good reason to question whether *all* ICC rate reductions (and recovery mechanism reductions too) should continue robotically apace when CAF updates, including a number of objectives and deadlines identified specifically within the *Transformation Order*, are still pending. See *Ex Parte* Letter from Michael R. Romano, Senior Vice President-Policy, NTCA, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 10-90, *et al.* (dated June 6, 2014).

²⁵ Federal Communications Commission, Local Telephone Competition: Status as of December 31, 2012, Industry Analysis and Technology Division, Wireline Competition Bureau, November 2013, Figure 2, p. 3.

The public interest would be served in at least two respects by a grant of this Petition. First, unlike other ICC reforms to date, the substantial revenue losses as a result of the transition to interstate rates for the traffic at issue in this petition will not be offset via the CAF ICC mechanism. Relief is thus needed to ensure that carriers operating in high-cost areas have access to cash flows needed to invest in broadband-capable, multi-use networks even as the CAF program that might otherwise have provided at least some level of relief continues to be implemented. In addition, a new arbitrage opportunity – created as a subset of originating intrastate traffic moves to interstate rates while all other originating intrastate traffic stays at intrastate rates – is not good public policy. As the Commission noted in undertaking ICC reform in the first instance, disparities between rates that apply to the same kinds of traffic invite arbitrage and exacerbate inefficiency.²⁶ The shortfall in revenues as a result of these rate reductions and the almost-certainty of ensuing disputes over how the degree to which originating traffic is or is not VoIP will be a distraction from implementing CAF mechanisms and taking more forceful and immediate steps toward reorientation of universal service for a broadband world.

III. CONCLUSION

For the foregoing reasons, Petitioners urge the Commission to grant this emergency petition without delay.

²⁶ *Transformation Order*, ¶ 791.

Respectfully Submitted,

NTCA–THE RURAL BROADBAND ASSOCIATION

By: /s/ Michael R. Romano
Michael R. Romano
Senior Vice President – Policy
mromano@ntca.org

By: /s/ Brian Ford
Brian Ford
Regulatory Counsel
bford@ntca.org

4121 Wilson Blvd, 10th Floor
Arlington, VA 22203
(703) 351-2000

**NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.**

By: /s/ Richard A. Askoff
Richard A. Askoff
80 South Jefferson Road
Whippany, NJ 07981
(973) 884-8000
raskoff@neca.org

ITTA

By: /s/ Genevieve Morelli
Genevieve Morelli
President
gmorelli@itta.us

By: /s/ Micah M. Caldwell
Micah M. Caldwell
Vice President –
Regulatory Affairs
mcaldwell@itta.us

1101 Vermont Ave., NW, Suite 501
Washington, D.C. 20005
(202) 898-1519

**EASTERN RURAL TELECOM
ASSOCIATION**

By: /s/ Jerry Weikle

Jerry Weikle
Regulatory Consultant
PO Box 6263
Raleigh, NC 27628
(919) 708-7464
weikle@erta.org

WTA-ADVOCATES FOR RURAL BROADBAND

By: /s/ Derrick Owens
Derrick Owens
Vice President of Government Affairs
317 Massachusetts Avenue N.E., Ste. 300C
Washington, DC 20002
(202) 548-0202
derrick@w-t-a.org

By: /s/ Gerard J. Duffy
Gerard J. Duffy
Regulatory Counsel for WTA
Blooston, Mordkofsky, Dickens, Duffy
& Prendergast, LLP
2120 L Street NW (Suite 300)
Washington, DC 20037
(202) 659-0830
gjd@bloostonlaw.com

FRONTIER COMMUNICATIONS CORPORATION

By: /s/ Michael D. Saperstein, Jr.
Michael D. Saperstein, Jr.
Frontier Communications Corporation
2300 N St. NW, Suite 710
Washington, DC 20037
(203) 614-4702
michael.saperstein@ftr.com

WINDSTREAM COMMUNICATIONS, INC.

By: /s/ Malena F. Barzilai
Malena F. Barzilai
Windstream Communications, Inc.
1101 17th St., N.W., Suite 802
Washington, DC 20036
(202) 223-7664
Malena.Barzilai@windstream.com