

**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**

**Adopted: February 3, 2012**

**Released: February 3, 2012**

By the Chief, Wireline Competition Bureau and Chief, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In the *USF/ICC Transformation Order*, the Commission delegated to the Wireline Competition Bureau and the Wireless Telecommunications Bureau (Bureaus) the authority to revise and clarify rules as necessary to ensure that the reforms adopted in the *Order* are properly reflected in the rules.<sup>1</sup> In this Order, the Bureaus act pursuant to this delegated authority to revise and clarify certain rules, and act pursuant to authority delegated to the Bureaus in sections 0.91, 0.131, 0.201(d), 0.291, and 0.331 of the Commission's rules to clarify certain rules.<sup>2</sup> This Order also modifies certain initial filing deadlines required by section 54.313 of the Commission's rules as necessary to comply with the Paperwork Reduction Act (PRA) requirements,<sup>3</sup> and finds good cause to delete certain rules that are now

<sup>1</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 at para. 1404 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*), *pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

<sup>2</sup> See 47 C.F.R. §§ 0.91, 0.131, 0.201(d), 0.291, 0.331. The Bureaus may release additional clarification orders in the future, consistent with its authority under the *USF/ICC Transformation Order*.

<sup>3</sup> See *USF/ICC Transformation Order*, note 961.

obsolete.<sup>4</sup>

2. The Bureaus note that petitions for reconsideration of certain aspects of the *USF/ICC Transformation Order* are pending before the Commission and will be addressed by the Commission in due course. Nothing in this Order is intended to prejudge Commission action with respect to those petitions.<sup>5</sup>

## II. DISCUSSION

### A. Universal Service

3. *Rate Floor.* In the *USF/ICC Transformation Order*, the Commission adopted a rule reducing high-cost support for incumbent carriers receiving high-cost support that charged local rates below a nationwide rate benchmark. The *Order* “reduce[s], on a dollar-for-dollar basis, HCLS and CAF phase I support,”<sup>6</sup> but excludes Interstate Common Line Support (ICLS) on the basis that it supports “interstate rates, not intrastate end-user rates.”<sup>7</sup> The *Order* does not specify how the offsets would apply to frozen high-cost support provided pursuant to CAF Phase I, which commingles intrastate and interstate support.<sup>8</sup> For the purposes of calculating certain interstate rates, frozen CAF Phase I support remains attributable to the interstate jurisdiction to the extent that the frozen CAF Phase I support replaced Interstate Access Support.<sup>9</sup> Moreover, the codified rule, section 54.318(d), makes clear that this rate reduction only applies to HCLS and HCMS.<sup>10</sup> In this Order, the Wireline Competition Bureau (Bureau) amends section 54.318(d) to clarify that support reductions associated with the rate floor will offset frozen CAF Phase I support only to the extent that the recipient’s frozen CAF Phase I support replaced HCLS and HCMS.<sup>11</sup> The offset does not apply to frozen CAF Phase I support to the extent that it replaced IAS and ICLS.

4. *Reporting Requirements for High-Cost Recipients.* In the *USF/ICC Transformation Order*, the Commission adopted or modified several reporting requirements for eligible telecommunications carriers (ETCs) that receive high-cost support.<sup>12</sup> In particular, the Commission adopted a rule, codified in section 54.313, requiring all ETCs receiving high-cost support to file annual reports regarding compliance with the Commission’s rules and progress toward its universal service goals.<sup>13</sup> Several of these requirements had previously applied only to federally designated ETCs, under former section 54.209. The *Order* states that section 54.313 annual reports will be due annually by April 1, beginning on April 1,

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<sup>4</sup> See 5 U.S.C. § 553(b)(3)(B).

<sup>5</sup> See *Connect America Fund et al.*, 77 Fed. Reg. 3635 (Jan. 25, 2012) (providing public notice of the petitions for reconsideration and setting February 9, 2012 as the deadline for oppositions to the petitions for reconsideration and February 21, 2012 as the deadline for replies).

<sup>6</sup> *USF/ICC Transformation Order*, para. 239.

<sup>7</sup> *Id.*, para. 241.

<sup>8</sup> *Id.*, para. 128.

<sup>9</sup> *Id.*, para. 152.

<sup>10</sup> 47 C.F.R. § 54.518(d).

<sup>11</sup> We also clarify that the text in footnote 391 of the *Order* that states that companies that receive HCMS “will also be required to report their basic voice rates and state-regulated fees, so that USAC can determine any reductions in support that are required” should have referred to companies that formerly received HCLS as well as those that received HCMS.

<sup>12</sup> *USF/ICC Transformation Order*, paras. 576-606.

<sup>13</sup> *Id.*, paras. 580-81.

2012.<sup>14</sup> As specified in the *Order*, however, any new reporting requirements are not effective until Federal Register publication of approval by the Office of Management and Budget of the associated information collections under the Paperwork Reduction Act (PRA).<sup>15</sup> The Commission delegated authority to the Bureau to modify initial filing deadlines required by section 54.313 as necessary to comply with the PRA requirements.<sup>16</sup> In this *Order*, the Bureau clarifies several aspects of those reporting requirements and provides guidance regarding the associated timing of such requirements.

5. First, the Commission stated in the *USF/ICC Transformation Order* that all ETCs are required to file a new five-year build-out plan by April 1, 2013, to account for the new broadband obligations established in the *Order*.<sup>17</sup> The Bureau hereby amends section 54.313(a)(1) to clarify this requirement.

6. ETCs previously designated by the Commission are still required to file a progress report on their existing five-year build-out plans currently on file with the Commission but, this year, the progress reports will be due April 1 rather than October 1. On April 1, 2013, those ETCs are required to file with the Commission a new five-year build-out plan that accounts for the new broadband obligations (which will replace the five-year build-out plan currently on file with the Commission) and to send copies to the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate. And beginning April 1, 2014, those ETCs are required to file annual progress reports on their new five-year build-out plans.

7. ETCs that have been designated by a state commission should continue to comply with state requirements, if any, regarding service improvement plans. If a state commission previously required an ETC to file a service quality improvement plan or annual updates with the state commission then the ETC should do so, but that ETC is not required to send a copy to the Commission. Similarly, ETCs that are not required by a state commission to file a quality improvement plan with the state commission are not required to file a plan with the Commission this year. However, on April 1, 2013, all state-designated ETCs are required to file with the Commission five-year build-out plans that account for the new broadband obligations adopted in the *USF/ICC Transformation Order* and to send copies to the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate. And beginning April 1, 2014 all state-designated ETCs are required to file annual progress reports on their five-year build-out plans.

8. In the *Order*, the Commission explained that the five-year build-out plan filed on April 1, 2013 should be consistent with section 54.202(a)(1)(ii).<sup>18</sup> That is, it should describe with specificity proposed improvements or upgrades to the ETC's network throughout its service area, including estimating the area and population that will be served as a result of improvements.<sup>19</sup> This requirement to file a new five-year build-out plan only applies to ETCs that receive high-cost support.

9. Second, section 54.313(a)(2)-(6) requires ETCs annually to file information concerning outages, unfulfilled service requests, and complaints, among other things.<sup>20</sup> We clarify that ETCs that

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<sup>14</sup> *Id.*, para. 581. We note that, in petitions for reconsideration currently pending before the Commission, parties have advocated for a different filing date for all or parts of the section 54.313 annual reports.

<sup>15</sup> *Id.*, para. 1412.

<sup>16</sup> *Id.*, note 961.

<sup>17</sup> *Id.*, para. 587.

<sup>18</sup> *Id.*

<sup>19</sup> See 47 C.F.R. § 54.202(a)(1)(ii).

<sup>20</sup> See 47 C.F.R. § 54.313(a)(2)-(6).

have been designated by the Commission are still required to file that information with respect to their provision of voice service during 2011. But this year, it will be due April 1 rather than October 1. Beginning April 1, 2013, and annually thereafter, those ETCs must file such information separately broken out for both voice and broadband service.<sup>21</sup>

10. We recognize that ETCs that have been designated by a state commission may not have been required to collect and report this information with respect to their provision of voice service during 2011. If state-designated ETCs did not collect this information during 2011, then it would be impossible for them to report it to the Commission in 2012, and they are not required to do so. If state-designated ETCs are subject to a state requirement to report some or all of this information annually to the state, however, then they should file a copy of any relevant information with the Commission in 2012. The Bureau will provide impacted ETCs sufficient time after PRA approval is obtained to file the relevant information. Beginning April 1, 2013, and annually thereafter, state-designated ETCs must file all of the information required by section 54.313(a)(2)-(6), and such information must be separately broken out for both voice and broadband service.<sup>22</sup>

11. Third, the *USF/ICC Transformation Order* requires that high-cost support recipients provide information demonstrating that they have engaged with Tribal governments in their supported areas, but does not specify a date for doing so.<sup>23</sup> The *Order* also delegated to the Office of Native Affairs and Policy (ONAP), in coordination with WCB and WTB, the authority to develop processes to guide support recipients in such engagements.<sup>24</sup> Because it will take some time to finalize these processes and for affected ETCs to comply with those requirements, the Bureau clarifies that the initial deadline for reporting information pursuant to this requirement is April 1, 2013 and annually thereafter. That is, ETCs are required to undertake their Tribal engagement obligations in 2012 after ONAP provides engagement process guidance, which will be the substance of the reporting beginning April 1, 2013 and annually thereafter.<sup>25</sup>

12. Fourth, the *USF/ICC Transformation Order* requires high-cost recipients to annually report ownership information, but does not specify a date for doing so.<sup>26</sup> The Bureau will provide affected ETCs sufficient time after PRA approval is obtained to file the required information. Beginning in 2013, and annually thereafter, the information must be filed by April 1.

13. Fifth, the *USF/ICC Transformation Order* adopts financial reporting requirements for privately held rate-of-return carriers and specifies that this information must be reported beginning April 1, 2012, subject to PRA approval.<sup>27</sup> The Bureau clarifies that the April 1 reporting date will not be applicable if PRA approval is not received prior to April 1 with sufficient time for respondents to comply. The Bureau will provide sufficient time once PRA approval is obtained for affected ETCs to comply with this requirement.<sup>28</sup>

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<sup>21</sup> See 47 C.F.R. § 54.313(a)(11).

<sup>22</sup> *Id.*

<sup>23</sup> *USF/ICC Transformation Order*, para. 604.

<sup>24</sup> *Id.*, paras. 637-38.

<sup>25</sup> We note that this clarification does not modify the Tribal engagement obligations that apply independently to Mobility Fund Phase I auction winners. See *id.* at para. 489, 47 C.F.R. § 54.1004(d).

<sup>26</sup> *USF/ICC Transformation Order*, para. 603.

<sup>27</sup> *Id.*, para. 598.

<sup>28</sup> We do not expect privately-held rate-of-return companies to comply with these financial reporting requirements on April 1, 2012.

14. Sixth, the *USF/ICC Transformation Order* specified that privately held rate-of-return carriers that receive loans from the Rural Utilities Service (RUS) could satisfy their financial reporting obligation by providing electronic copies of their annual RUS reports to the Commission.<sup>29</sup> The Bureau modifies section 54.313(f)(2) to reflect the Commission's intent that such companies may file their RUS reports in lieu of an audited financial statement.

15. *Application of the Per-Line Cap to Competitive Eligible Telecommunications Carrier (ETC) Phase Down.* In the *USF/ICC Transformation Order*, the Commission adopted an annual baseline for the phase down of competitive ETC support equal to the lesser of the amount of support the competitive ETC received in 2011 or \$3000 per loop (which is \$250 per line per month).<sup>30</sup> In this Order, the Bureau clarifies that the \$3000 per-loop limit is applicable to competitive ETCs at the incumbent study area level. For example, if a competitive ETC receives an average of \$2000 per loop per year serving multiple incumbent study areas, but it receives \$3500 per loop per year in one of the study areas, the cap will constrain the competitive ETC's support in that study area. This clarification ensures that, consistent with the Commission's stated rationale, the competitive ETCs' baselines are commensurate with adjustments to the support provided to incumbents serving the same areas.

16. *Elimination of Section 54.315 (Disaggregation).* Section 54.315 of the Commission's rules permits incumbent local exchange carriers to target the high-cost universal service support they receive to specific areas within their study areas based on the relative costs of serving those areas.<sup>31</sup> This disaggregation of support was intended to ensure that competitive ETCs receive an appropriate per-line support amount for the various areas within the incumbent study area, rather than a single, undifferentiated per-line support amount for the entire study area.<sup>32</sup> Because the Commission eliminated the identical support rule in the *USF/ICC Transformation Order* and competitive ETCs therefore no longer receive support based on incumbent support amounts, the Commission's disaggregation rule is now obsolete.<sup>33</sup> Because this rule is obsolete, we find good cause to delete it without notice and comment.<sup>34</sup>

17. *Elimination of Quarterly Line Counts in Areas Served by a Competitive ETC.* In the *USF/ICC Transformation Order*, the Commission eliminated the identical support rule and adopted a process to phase down competitive ETC support.<sup>35</sup> The Commission also eliminated the requirement that competitive ETCs, except those serving remote areas of Alaska, file quarterly line counts.<sup>36</sup> In this Order, the Bureau amends section 54.903(a)(2) to eliminate requirements for certain quarterly line count filings by incumbent carriers that were necessary only for the purpose of calculating support for competitive ETCs pursuant to the identical support rule.<sup>37</sup> Carriers filing quarterly line counts pursuant to section

<sup>29</sup> *USF/ICC Transformation Order*, para. 599.

<sup>30</sup> *Id.*, paras. 515-16.

<sup>31</sup> 47 C.F.R. § 54.315.

<sup>32</sup> See *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 96-45, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11299-11309, paras. 136-164 (2001)

<sup>33</sup> See *USF/ICC Transformation Order*, paras. 498-532.

<sup>34</sup> See 5 U.S.C. § 553(b)(3)(B).

<sup>35</sup> *USF/ICC Transformation Order*, paras. 498-511.

<sup>36</sup> *Id.*, App. A, 47 C.F.R. § 54.307.

<sup>37</sup> See 47 C.F.R. §§ 36.612, 54.903(a)(2).

54.903(a)(2) solely because of the presence of a competitive ETC will no longer be required to file line counts on a quarterly basis.<sup>38</sup> Carriers may continue to file voluntary updates of line counts. Because the quarterly line filing requirement is obsolete, the Bureau finds good cause to change the Commission's rules without notice and comment.

18. *Elimination of Average Schedule Formula for Local Switching Support.* In the *USF/ICC Transformation Order*, the Commission eliminated local switching support (LSS) but did not delete section 54.301, governing LSS, from its rules because several elements continue to be applicable for the purposes of truing up support for prior years.<sup>39</sup> Pursuant to section 54.301(f), the Administrator is required each year to file a proposed formula for calculating LSS for average schedule companies in the next year.<sup>40</sup> Because LSS calculations will not be required on a going forward basis, this requirement is obsolete and the Bureau deletes section 54.301(f). Because this rule is obsolete, we find good cause to delete it without notice and comment.<sup>41</sup>

19. *Mobility Fund Phase I Eligibility – Access to Spectrum Requirement.* In the *USF/ICC Transformation Order*, the Commission required that any applicant for a Mobility Fund Phase I auction have access to the spectrum necessary to fulfill any obligations related to support.<sup>42</sup> The Commission further required that such access through a license or leasing arrangement be in effect prior to auction.<sup>43</sup> In order to facilitate auction participation, the Commission concluded that a party could fulfill the spectrum access requirement by acquiring spectrum access that is contingent on obtaining support in the auction.<sup>44</sup> The Commission further found that “failing to ensure spectrum access, on at least a conditional basis, prior to entering a Mobility Fund auction would be inconsistent with the serious undertakings implicit in bidding for support.”<sup>45</sup> This eligibility requirement is codified in section 54.1003(b).<sup>46</sup> This Order amends the rule to clarify that an applicant must have obtained any Commission approvals necessary for the spectrum access prior to submitting an application to participate in competitive bidding.

## B. Intercarrier Compensation

20. *Recovery for Rate-of-Return Carriers.* In the *USF/ICC Transformation Order*, the Commission adopted a transitional recovery mechanism allowing carriers limited recovery of revenues reduced as a result of that *Order*. The Commission specified a baseline<sup>47</sup> from which a rate-of-return incumbent local exchange carrier's Eligible Recovery<sup>48</sup> would be calculated,<sup>49</sup> and specified that this baseline will decrease by five percent per year.<sup>50</sup> Specifically, the Order correctly stated that a rate-of-

<sup>38</sup> The Commission previously amended a similar requirement in section 36.612 of its rules. See *USF/ICC Transformation Order*, App. A, 47 C.F.R. § 36.612.

<sup>39</sup> *Id.*, paras. 253-57.

<sup>40</sup> 47 C.F.R. § 54.301(f).

<sup>41</sup> See 5 U.S.C. § 553(b)(3)(B).

<sup>42</sup> *USF/ICC Transformation Order*, para. 394.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*, para. 395.

<sup>45</sup> *Id.*, para. 396.

<sup>46</sup> 47 C.F.R. § 54.1003(b).

<sup>47</sup> 47 C.F.R. § 51.917(c).

<sup>48</sup> 47 C.F.R. § 51.917(d).

<sup>49</sup> 47 C.F.R. § 51.917(b)(2).

<sup>50</sup> See *USF/ICC Transformation Order*, paras. 891-99.

return carrier's Eligible Recovery would be determined by reducing its 2011 Rate-of-Return Baseline by a five percent adjustment factor *before* subtracting its "ICC recovery opportunity" for that year.<sup>51</sup> Under the rules, however, a rate-of-return carrier's Eligible Recovery would be overstated because the five percent adjustment factor would not be applied until *after* subtracting its ICC recovery opportunity for that year.<sup>52</sup> Applying the adjustment factor *after* reducing a carrier's baseline by its ICC recovery opportunity would increase the carrier's Eligible Recovery, entitling it to increase charges on end-users and/or to increase its claim to CAF funding, and as a result would reduce the effective adjustment below the amount the Commission specified in the *Order*. As adopted, sections 51.917(d)(1)(i)(3) and (4)<sup>53</sup> address the respective components of eligible recovery (Transitional Intrastate Access Service, interstate switched access, and net reciprocal compensation (including both CMRS and non-CMRS reciprocal compensation)) in terms of reductions rather than recovery opportunity. Accordingly, the rule is corrected and revised as set forth in Appendix B to reflect the carrier's intercarrier compensation recovery opportunity for the relevant year and to apply the Rate-of-Return Carrier Baseline Adjustment Factor correctly.

21. *Monitoring Compliance with the Recovery Mechanism Rules.* In the *USF/ICC Transformation Order*, the Commission adopted measures to enable it to monitor compliance with the recovery mechanism adopted for incumbent LECs, requiring such carriers to file certain data on an annual basis.<sup>54</sup> The Commission delegated to the Bureau the responsibility to develop and implement the data filing process.<sup>55</sup> To minimize burdens, the *USF/ICC Transformation Order* noted that the Commission would "ensure that the data filed with USAC [(the Universal Service Administrative Company), for the purpose of justifying a carrier's ability to impose an ARC<sup>56</sup>] is consistent with our request [for Recovery Mechanism compliance monitoring data], so that carriers can use the same format for both filings."<sup>57</sup> However, because the Commission found that data for monitoring compliance may be filed at the holding company level, whereas the data needed for USAC will be at the study area level, the filings cannot be the same. Thus, we clarify that the data filing requirements for Recovery Mechanism compliance monitoring and for ARC justification will be as consistent as possible, and will be in the same or similar format in order to reduce or eliminate burdens associated with filing wherever possible.

22. *Prospective Treatment of VoIP Traffic.* In the *USF/ICC Transformation Order*, the Commission addressed the prospective treatment of VoIP-PSTN traffic by adopting a transitional compensation framework for such traffic.<sup>58</sup> In so doing, the Commission adopted the transitional rules specifying the default compensation for VoIP PSTN-traffic.<sup>59</sup> With regard to "toll" traffic (interstate and intrastate calls), the Commission adopted rules specifying that the default charges for "toll" VoIP-PSTN traffic will be equal to interstate access rates applicable to non-VoIP traffic, both in terms of the rate level and rate structure. We clarify that the prospective VoIP-PSTN framework applies to the interstate rate as well as the interstate structure, including both per-minute (usage sensitive) and flat-rated (dedicated)

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<sup>51</sup> *Id.*, para. 899. The Order defined a carrier's ICC recovery opportunity as "(i) its estimated MOU for each rate element subject to reform times; (ii) the default transition rate for that rate element for that year; plus (3) any necessary true-ups based on the prior year's actual MOUs."

<sup>52</sup> 47 C.F.R. § 51.917(d)(i)(1), *et seq.*

<sup>53</sup> 47 C.F.R. § 51.917(d)(1)(i).

<sup>54</sup> See *USF/ICC Transformation Order*, para. 923.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*, paras. 880 (requirements for Price Cap carriers); 889 (requirements for Rate-of-Return carriers).

<sup>57</sup> *Id.*, para. 923.

<sup>58</sup> *Id.*, paras. 933-75; 47 C.F.R. § 51.913.

<sup>59</sup> 47 C.F.R. § 51.913.

charges.<sup>60</sup>

23. To implement the VoIP-PSTN framework, the Commission encouraged carriers to negotiate contracts to implement all intercarrier compensation obligations.<sup>61</sup> At the same time, the Commission permitted carriers to include, in their intrastate tariffs, a default means of determining which calls are subject to the VoIP-PSTN framework. In particular, to address concerns that carriers could not identify which calls originate and/or terminate in IP format, the Commission permitted LECs “to specify in its intrastate tariff that the default percentage of traffic subject to the VoIP-PSTN framework is equal to the percentage of VoIP subscribers in the state based on the *Local Competition Report*, as released periodically.”<sup>62</sup> We clarify that this default percentage is just one means by which a carrier could identify the amount of traffic subject to the VoIP-PSTN framework, and carriers are free to utilize traffic studies, or other reasonable and auditable metrics to determine the percentage of traffic subject to the VoIP-PSTN framework.

24. *Operation of VoIP Rules When Interstate Access Rates Exceed Intrastate Access Rates.* The Commission adopted a bill-and-keep methodology for all traffic and began the implementation process by providing a measured transition to reduce the terminating rates for most rate elements to bill-and-keep. In so doing, the Commission made clear that, “in cases where a provider’s interstate terminating access rates are higher than its intrastate terminating access rates, intrastate rate reductions shall begin to occur at the stage of the transition in which interstate rates come to parity with intrastate rate levels.”<sup>63</sup> Thus, the Commission made clear that it did not intend, under any circumstances, for rates to increase by virtue of its reforms. Indeed, the Commission also capped most rates as of the effective date of the rules, or December 29, 2011,<sup>64</sup> to ensure that no rates increased after the date of the *Order*. However, in instances where intrastate rates are lower than interstate rates, the Commission did not explain how the prospective VoIP rules would operate – whether the interstate rate would apply in the intrastate tariff or whether the intrastate rate, which is lower, would apply. Parties have notified us that, absent a clarification, intrastate tariffs could have a higher rate for VoIP traffic than other intrastate rates.<sup>65</sup> Such an intrastate rate disparity was not the Commission’s intent and could lead to the very arbitrage activities that the *USF/ICC Transformation Order* intended to eliminate. The Commission held, for example, VoIP-PSTN traffic “will pay most of the same rates as all other traffic in the second year of reform.”<sup>66</sup> Given the mechanics of the transition, this would not be true if VoIP-PSTN traffic were subject to higher intrastate access charges than other traffic, however.<sup>67</sup> Thus, we clarify that, in the limited circumstance of implementing

<sup>60</sup> *Id.*, para. 944 (“Default charges for ‘toll’ VoIP-PSTN traffic will be equal to interstate access rates applicable to non-VoIP traffic, both in terms of the rate level *and rate structure*”) (emphasis added and footnote omitted).

<sup>61</sup> *Id.*, paras. 963-64.

<sup>62</sup> *Id.*, para. 963.

<sup>63</sup> *Id.*, para. 804; *see also* 47 C.F.R. §§ 51.907, 51.909.

<sup>64</sup> 76 FR 73830 (Nov. 29, 2011).

<sup>65</sup> *See* Letter from John T. Nakahata, Counsel to General Communications Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51 at 2-4 (filed Dec. 19, 2011).

<sup>66</sup> *USF/ICC Transformation Order*, para. 949 n.1919.

<sup>67</sup> Under the transition, certain intrastate access rates are reduced to the level of interstate rates in the first two steps. *See generally infra* App. A. Under that transition, “in cases where a provider’s interstate terminating access rates are higher than its intrastate terminating access rates, intrastate rate reductions shall begin to occur at the stage of the transition in which interstate rates come to parity with intrastate rate levels.” *USF/ICC Transformation Order* at para. 804. Consequently, if intrastate rates subject to the transition are lower than interstate rates, this disparity will not be addressed until sometime beyond the second year of the transition. Under such circumstances, if intrastate toll VoIP-PSTN traffic were paying interstate access rates, it thus would, for example, be subject to different (higher) terminating access rates than other traffic even beyond the second year of the transition.

the new intercarrier compensation for VoIP regime adopted in the *USF/ICC Transformation Order*, when a carrier's intrastate access rate is lower than its corresponding interstate access rate, that carrier may not, in its intrastate tariff, include a rate for toll VoIP-PSTN traffic that is higher than its intrastate access rate.

25. *Access Stimulation and Previous Rulings on End Users.* In the *USF/ICC Transformation Order*, the Commission adopted revisions to its interstate switched access charge rules to address access stimulation.<sup>68</sup> Prior to the *USF/ICC Transformation Order*, the Commission adopted several orders resolving complaints concerning access stimulation under preexisting rules and compliance with the Communications Act.<sup>69</sup> We clarify that the *USF/ICC Transformation Order* complements these previous decisions, and nothing in the *USF/ICC Transformation Order* should be construed as overturning or superseding these previous Commission decisions.

26. *Access Stimulation and Fee Arrangements.* In the *USF/ICC Transformation Order*, the Commission adopted rules requiring refiling of interstate access tariffs in certain circumstances when a local exchange carrier (LEC) is engaged in access stimulation.<sup>70</sup> In particular, the Commission adopted a rule defining when such tariffs must be refiled. In relevant part, the Commission explained that a LEC must have entered into an access revenue sharing agreement “whether express, implied, written or oral, that, over the course of the agreement, would directly or indirectly result in a net payment to the other party (including affiliates) to the agreement, in which payment by the rate-of-return LEC or competitive LEC is based on the billing or collection of access charges from interexchange carriers or wireless carriers.”<sup>71</sup>

27. We clarify that any arrangement between a LEC and another party, including affiliates, that results in the generation of switched access traffic to the LEC and provides for the net payment of consideration of any kind, whether fixed fee or otherwise, to the other party, including an affiliate, is considered to be “based upon the billing or collection of access charges.”

28. *Rural Transport Rule.* In the *USF/ICC Transformation Order*, the Commission adopted an “interim default rule allocating responsibility for transport costs applicable to non-access traffic exchanged between CMRS providers and rural, rate-of return regulated LECs,” including when a CMRS provider selects an interconnection point outside the LEC's service area.<sup>72</sup> We clarify that, in adopting the interim default rule, the Commission did not intend to affect the existing rules governing points of interconnection (POIs) between CMRS providers and price cap carriers. Indeed, the Commission sought

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<sup>68</sup> See generally, *USF/ICC Transformation Order*, paras. 656 - 701.

<sup>69</sup> See *Qwest Communications Corp., Complainant, v. Farmers and Merchants Mutual Telephone Co., Defendant*, File No. EB-07-MD-001, *Second Order on Reconsideration*, 24 FCC Red 14801, 14814 at para. 26 (2009). See also *Qwest Communications Corp. v. Northern Valley Communications*, File No. EB-11-MD-001, *Memorandum Opinion and Order*, 26 FCC Red. 8332 (2011), *reconsideration denied*, 26 FCC Red 14520 (Oct. 5, 2011); and *Sprint Communications Company, L.P. v. Northern Valley Communications*, File No. EB-11-MD-003, 26 FCC Red 10780 (2011), *reconsideration denied*, FCC 11-170, 2011 FCC Lexis 4630 (issued November 14, 2011) (collectively “the Access Stimulation Orders”). Northern Valley has filed petitions for review of these decisions before the U.S. Court of Appeals for the D.C. Circuit. *Northern Valley v. FCC*, Case No. 11-1467 (2011) (appealing the Qwest decision) and *Northern Valley v. FCC*, Case No. 11-1468 (appealing the Sprint decision). The cases have been consolidated.

<sup>70</sup> *USF/ICC Transformation Order*, para. 667.

<sup>71</sup> *Id.*, para. 669. In addition to a revenue sharing agreement, a LEC must either have had a three-to-one interstate terminating-to-originating traffic ratio in a calendar month, or have had a greater than 100 percent increase in interstate originating and/or terminating switched access MOU in a month compared to the same month in the preceding year. *Id.*, para. 667.

<sup>72</sup> *Id.*, paras. 998–999.

additional comment on issues concerning POI obligations in the *Further Notice of Proposed Rulemaking*.<sup>73</sup>

### III. PROCEDURAL MATTERS

#### A. Paperwork Reduction Act

29. Although this document clarifies several existing information collection requirements, it does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

#### B. Final Regulatory Flexibility Act Certification

30. Final Regulatory Flexibility Certification. The Regulatory Flexibility Act of 1980, as amended (RFA)<sup>74</sup> requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."<sup>75</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>76</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>77</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>78</sup>

31. This Order clarifies, but does not otherwise modify, the *USF/ICC Transformation Order*. These clarifications do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to *USF/ICC Transformation Order*. Therefore, we certify that the requirements of this Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. § 801(a)(1)(A). In addition, the Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register. See 5 U.S.C. § 605(b).

#### C. Congressional Review Act

32. The Commission will send a copy of this Order to Congress and the Government

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<sup>73</sup> *Id.*, para. 1318.

<sup>74</sup> 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).

<sup>75</sup> 5 U.S.C. § 605(b).

<sup>76</sup> 5 U.S.C. § 601(6).

<sup>77</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>78</sup> Small Business Act, 15 U.S.C. § 632.

Accountability Office pursuant to the Congressional Review Act.<sup>79</sup>

#### IV. ORDERING CLAUSES

33. Accordingly, IT IS ORDERED, that pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as 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 pursuant to sections 0.91, 0.131, 0.201(d), 0.291, 0.331, 1.3, and 1.427 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.131, 0.201(d), 0.291, 0.331, 1.3, 1.427 and pursuant to the delegations of authority in paragraphs 581 and 1404 of FCC 11-161 (rel. Nov. 18, 2011), that this Order IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the Federal Register of OMB approval.

34. IT IS FURTHER ORDERED, that Parts 51 and 54 of the Commission's rules, 47 C.F.R. Parts 51, 54, are AMENDED as set forth in Appendix A, and such rule amendments shall be effective 30 days after the date of publication of the rule amendments in the Federal Register, except to the extent they contain information collections subject to PRA review. The rules that contain information collections subject to PRA review will become effective upon announcement in the Federal Register of OMB approval and an effective date of the rule(s).

35. IT IS FURTHER ORDERED, that the Commission SHALL SEND a copy of this Report and Order and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

36. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett  
Chief  
Wireline Competition Bureau

Rick Kaplan  
Chief  
Wireless Telecommunications Bureau

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<sup>79</sup> *See* 5 U.S.C. 801(a)(1)(A).

## APPENDIX

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 51 and 54 to read as follows: PART 51 – INTERCONNECTION

1. Amend section 51.917(d) to read as follows:

**§51.917 Revenue Recovery For Rate-of-Return Carriers**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

- (i) Beginning July 1, 2012, a Rate-of-Return Carrier's eligible recovery will be equal to the 2011 Rate-of-Return Carrier Base Period Revenue multiplied by the Rate-of-Return Carrier Baseline Adjustment Factor less:
  - 1. The Expected Revenues from Transitional Intrastate Access Service for the year beginning July 1, 2012, reflecting forecasted demand multiplied by the rates in the rate transition contained in § 51.909;
  - 2. The Expected Revenues from interstate switched access for the year beginning July 1, 2012, reflecting forecasted demand multiplied by the rates in the rate transition contained in § 51.909; and
  - 3. Expected Net Reciprocal Compensation Revenues for the year beginning July 1, 2012 using the target methodology required by § 51.705.
- (ii) Beginning July 1, 2013, a Rate-of-Return Carrier's eligible recovery will be equal to the 2011 Rate-of-Return Carrier Base Period Revenue multiplied by the Rate-of-Return Carrier Baseline Adjustment Factor less:
  - 1. The Expected Revenues from Transitional Intrastate Access Service for the year beginning July 1, 2013, reflecting forecasted demand multiplied by the rates in the rate transition contained in § 51.909;
  - 2. The Expected Revenues from interstate switched access for the year beginning July 1, 2013, reflecting forecasted demand multiplied by the rates in the rate transition contained in § 51.909; and
  - 3. Expected Net Reciprocal Compensation Revenues for the year beginning July 1, 2013 using the target methodology required by § 51.705.
- (iii) Beginning July 1, 2014, a Rate-of-Return Carrier's eligible recovery will be equal to the 2011 Rate-of-Return Carrier Base Period Revenue multiplied by the Rate-of-Return Carrier Baseline Adjustment Factor less:
  - 1. The Expected Revenues from Transitional Intrastate Access Service for the year beginning July 1, 2014, reflecting forecasted demand multiplied by the rates in the rate transition contained in § 51.909 (including the reduction in intrastate End Office

Switched Access Service rates), adjusted to reflect the True-Up Adjustment for Transitional Intrastate Access Service for the year beginning July 1, 2012;

2. The Expected Revenues from interstate switched access for the year beginning July 1, 2014, reflecting forecasted demand multiplied by the rates in the rate transition contained in § 51.909, adjusted to reflect the True-Up Adjustment for Interstate Switched Access for the year beginning July 1, 2012; and
3. Expected Net Reciprocal Compensation Revenues for the year beginning July 1, 2014 using the target methodology required by § 51.705, adjusted to reflect the True-Up Adjustment for Reciprocal Compensation for the year beginning July 1, 2012.
4. An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2012.

\* \* \* \* \*

## PART 54 – UNIVERSAL SERVICE

### 1. Amend section 54.301 by deleting paragraph (f).

2. Amend section 54.307 by adding a sentence to subparagraph (e)(1)(ii) as follows:

#### **54.307 Support to a competitive eligible telecommunications carrier.**

\*\*\*

(e) \*\*\*

(1)\*\*\*

(ii)\*\*\*The \$3,000 per line limit shall be applied to support amounts determined for each incumbent study area served by the competitive eligible telecommunications carrier.

2. Amend section 54.313 by revising subparagraph (a) (9) and adding a sentence to subparagraph (f)(2) as follows:

#### **§ 54.313 Annual reporting requirements for high-cost recipients.**

(a) \*\*\*

\*\*\*

(9) *Beginning April 1, 2013.* To the extent the recipient serves Tribal lands, documents or information demonstrating that the ETC had discussions with Tribal governments that, at a minimum, included:

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(f) \*\*\*

(2) \*\*\* In lieu of filing this annual report, any ETC that files annual financial reports with the Rural Utilities Service may instead file a copy of its report to the Rural Utilities Service.

3. Delete section 54.315.

4. Amend section 54.318 by revising paragraph (d) as follows:

#### **§ 54.318 High-cost support; limitations on high-cost support.**

\*\*\*

(d) For purposes of this section, high-cost support is defined as the support available pursuant to § 36.631 of this chapter and frozen high-cost support provided to price cap carriers to the extent it is based on support previously provided pursuant to sections 36.631 or 54.309 of this chapter.

5. Amend section 54.903 by revising subparagraph (a)(2) as follows:

**§ 54.903 Obligations of rate-of-return carriers and the Administrator.**

\*\*\*

**(a)**

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(2) A rate-of-return carrier may submit the information in paragraph (a) of this section in accordance with the schedule in § 36.612 of this chapter, even if it is not required to do so. If a rate-of-return carrier makes a filing under this paragraph, it shall separately indicate any lines that it has acquired from another carrier that it has not previously reported pursuant to paragraph (a) of this section, identified by customer class and the carrier from which the lines were acquired.

6. Amend section 54.1003 by revising paragraph (b) to read as follows:

**§ 54.1003 Provider Eligibility.**

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(b) An applicant shall have access to spectrum in an area that enables it to satisfy the applicable performance requirements in order to receive Mobility Fund Phase I support for that area. The applicant shall certify, in a form acceptable to the Commission, that it has received any Commission approvals necessary for such access at the time it applies to participate in competitive bidding and at the time that it applies for support and that it will retain such access for five (5) years after the date on which it is authorized to receive support. Pending requests for such approvals are not sufficient to satisfy this requirement.