

**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 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 Reform – Mobility Fund)	WT Docket No. 10-208

ORDER

Adopted: February 27, 2012

Released: February 27, 2012

By the Chief, Wireline Competition Bureau

I. INTRODUCTION

1. In the *USF/ICC Transformation Order*, the Commission delegated to the Wireline Competition Bureau (Bureau) the authority to revise and clarify rules as necessary to ensure that the reforms adopted in the *Order* are properly reflected in the rules.¹ In this Order, the Bureau acts pursuant to this delegated authority to revise and clarify certain rules, and acts pursuant to authority delegated to the Bureau in sections 0.91, 0.201(d), and 0.291 of the Commission's rules to clarify certain rules.²

¹ 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).

² See 47 C.F.R. §§ 0.91, 0.201(d), 0.291. The Bureau may release additional clarification orders in the future, consistent with its authority under the *USF/ICC Transformation Order*. See, e.g., *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 12-147 (rel. Feb. 3, 2012) (*USF/ICC Clarification Order*).

II. DISCUSSION

A. Intercarrier Compensation

2. In the *USF/ICC Transformation Order*, the Commission adopted a prospective transitional intercarrier compensation framework for VoIP-PSTN traffic.³ This transitional framework included default compensation rates and addressed a number of implementation issues, including explaining the scope of charges that local exchange carrier (LEC) partners of affiliated or unaffiliated retail VoIP providers are able to include in tariffs. In particular, the Commission determined that it was appropriate to adopt a “symmetric” framework for VoIP-PSTN traffic. This symmetric approach means that “providers that benefit from lower VoIP-PSTN rates when their end-user customers’ traffic is terminated to other providers’ end-user customers also are restricted to charging the lower VoIP-PSTN rates when other providers’ traffic is terminated to their end-user customers.”⁴

3. As part of its symmetric regime, the Commission adopted rules that “permit a LEC to charge the relevant intercarrier compensation for functions performed by it and/or its retail VoIP partner, regardless of whether the functions performed or the technology used correspond precisely to those used under a traditional TDM architecture.”⁵ The Commission cautioned, however, that “although access services might functionally be accomplished in different ways depending upon the network technology, the right to charge does not extend to functions not performed by the LEC or its retail VoIP service provider partner.”⁶ The Commission adopted this limitation to address concerns in the record regarding double billing.⁷ This limitation was codified as part of the VoIP-PSTN framework in section 51.913(b) of the Commission’s rules.⁸ The Commission also modified its tariffing rules in Part 61 for competitive LECs to implement the VoIP symmetry rule.⁹

³ See *USF/ICC Transformation Order* at para. 970; see also 47 C.F.R. §§ 51.913, 61.26(f).

⁴ *USF/ICC Transformation Order* at para. 942.

⁵ *Id.* at 970. This is often referred to as the “VoIP symmetry rule.”

⁶ *Id.* n.2028; see 47 C.F.R. § 51.913(b).

⁷ *USF/ICC Transformation Order* at para. 970 (“However, our rules include measures to protect against double billing, and we also make clear that our rules do not permit a LEC to charge for functions performed neither by itself or its retail service provider partner.”).

⁸ Section 51.913(b) states, in pertinent part, that “a local exchange carrier shall be entitled to assess and collect the full Access Reciprocal Compensation charges prescribed by this subpart that are set forth in a local exchange carrier’s interstate or intrastate tariff for the access services defined in § 51.903 regardless of whether the local exchange carrier itself delivers such traffic to the called party’s premises or delivers the call to the called party’s premises via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. 153(36), that does not itself seek to collect Access Reciprocal Compensation charges prescribed by this subpart for that traffic. This rule does not permit a local exchange carrier to charge for functions not performed by the local exchange carrier itself or the affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service.” 47 C.F.R. § 51.913(b).

⁹ Parties argued that this additional rule language was necessary to implement the VoIP symmetry rule and avoid future disputes and controversy over the tariffing of these charges. See Letter from Mary McManus, Counsel, Comcast Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GC Docket No. 09-51, WT Docket No. 10-208 (filed Sep. 22, 2011). In particular, the Commission modified 61.26(f) and added the language in italics to the existing rule: “[i]f a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services, *except if the CLEC is listed in the database of the Number Portability Administration Center as providing the calling party or dialed number, the CLEC may assess a rate equal to the rate that would be*

(continued....)

4. On February 3, 2012, YMax Communications Corp. (YMax) filed an *ex parte* letter seeking confirmation of its interpretation that “under [the Commission’s] new VoIP-PSTN ‘symmetry’ rule, a LEC is performing the functional equivalent of ILEC access service, and therefore entitled to charge the full ‘benchmark’ rate level, whenever it is providing telephone numbers and some portion of the interconnection with the PSTN, and regardless of how or by whom the last-mile transmission is provided.”¹⁰ Stated differently, YMax seeks guidance from the Commission as to whether the revised rule language in Part 61, specifically, section 61.26(f) permits a competitive LEC to tariff and charge the full benchmark rate even if it includes functions that neither it nor its VoIP retail partner are actually providing. YMax asserts that the purpose of the Commission’s revisions to section 61.26(f) was to “defin[e] the minimum access functionality necessary in order for a CLEC to be allowed to collect access charges at the full benchmark level under the VoIP-PSTN symmetry rule.”¹¹ We disagree. The Commission revised section 61.26(f) to reflect the change in the tariffing process to implement the VoIP symmetry rule, which included limitations to prevent double billing. Interpreting the rule in the manner proposed by YMax could enable double billing. The Commission made clear in adopting the VoIP-symmetry rule that it intended to prevent double billing and charging for functions not actually provided.¹² Indeed, section 51.913(b) expressly states that “[t]his rule does *not* permit a local exchange carrier to charge for functions not performed by the local exchange carrier itself or the affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service.”¹³

5. YMax’s letter does, however, highlight a potential ambiguity because the amended rule 61.26(f), which is the tariffing provision intended to implement the VoIP symmetry rule, did not include an express cross reference to section 51.913(b). Although section 51.913(b) makes clear that its terms apply notwithstanding any other Commission rule,¹⁴ to remove any ambiguity regarding the scope of what competitive LECs are permitted to assess in their tariffs, we amend section 61.26(f) to make clear that the ability to charge under the tariff is limited by section 51.913(b). In so doing, we address and reject YMax’s interpretation of section 61.26(f).¹⁵

B. Universal Service

6. *Verizon Petition for Clarification or, in the Alternative, for Reconsideration*. In the *USF/ICC Transformation Order*, the Commission adopted rules to phase down existing high-cost support for competitive eligible telecommunications carriers (ETCs), and addressed the phase down of existing

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charged by the competing ILEC for all exchange access services required to deliver interstate traffic to the called number.” 47 C.F.R. § 61.26(f) (emphasis added).

¹⁰ Letter from John B. Messenger, VP – Legal & Regulatory, YMax Communications Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GC Docket No. 09- 51, WT Docket No. 10-208 (filed Feb. 3, 2012) (YMax Letter).

¹¹ *Id.*

¹² *USF/ICC Transformation Order* at para. 970 (“However, our rules include measures to protect against double billing, and we also make clear that our rules do not permit a LEC to charge for functions performed neither by itself or its retail service provider partner.”).

¹³ 47 C.F.R. § 51.913(b) (emphasis added).

¹⁴ 47 C.F.R. § 51.913(b) (noting that this section applies “[n]otwithstanding any other provision of the Commission’s rules”).

¹⁵ *USF/ICC Transformation Order* at para. 970; *see also* 47 C.F.R. §§ 51.913, 61.26(f). Thus, we make clear it is not sufficient merely for the competitive LEC to be listed in the Number Portability Administration Center (NPAC) database as providing the associated telephone numbers to enable a competitive LEC to assess the full benchmark rate.

high-cost support to Verizon Wireless and Sprint pursuant to those carriers' prior merger commitments, as clarified by the *Corr Wireless Order*.¹⁶ On December 29, 2011, Verizon Wireless filed a petition for clarification or, in the alternative, for reconsideration of this aspect of the *Order* as it applies to Verizon Wireless.¹⁷ Verizon Wireless argues that there are two permissible interpretations of the *USF/ICC Order* as it bears on the phase down of support for Verizon Wireless: that the general phase down of the competitive ETC support applies but Verizon Wireless's merger commitment no longer does, or that Verizon Wireless's merger commitment remains in effect but general phase down of competitive ETC support does not.¹⁸ Verizon Wireless states that a Bureau-level clarification is the appropriate means of resolving this ambiguity.¹⁹

7. The Bureau clarifies that, pursuant to paragraph 520 of the *USF/ICC Transformation Order*, only Verizon Wireless's merger commitment applies.²⁰ Specifically, the Bureau clarifies that Verizon Wireless will receive support in 2012 based on its merger commitments, as clarified by the *Corr Wireless Order*,²¹ not based on the general phase down of competitive ETC support described in the *USF/ICC Transformation Order*.²² Verizon Wireless will not receive high-cost competitive ETC support after 2012. The Universal Service Administrative Company (USAC) shall disburse to Verizon Wireless in 2012 20 percent of the support it would have received for each ETC service area in the absence of its merger commitment and the *USF/ICC Transformation Order*. As a proxy for the amount Verizon Wireless would have received in 2012 in the absence of its merger commitment and the *USF/ICC Transformation Order*, USAC shall use the amount of support it calculated for Verizon Wireless in 2011 pursuant to the identical support rule and the interim cap, including any support not actually disbursed to Verizon Wireless as a result of the merger commitment.²³

8. Accordingly, the Bureau grants Verizon's Petition to the extent it requests clarification of

¹⁶ See *USF/ICC Transformation Order* at paras. 519-20.

¹⁷ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Petition for Clarification or, in the Alternative, for Reconsideration of Verizon, at 3-8 (filed Dec. 29, 2011). The petition also addressed the Commission's rules governing phantom traffic, but the Bureau does not act on that aspect of the petition in this Order.

¹⁸ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Reply to Oppositions to Petition for Clarification or, in the Alternative, For Reconsideration of Verizon, at 2-3 (filed Feb. 21, 2012) (as corrected in Letter from Christopher Miller, Verizon, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 10-90 et al., filed Feb. 22, 2012); see also Letter from Tamara Preiss, Verizon, to Austin Schlick, Federal Communications Commission, WC Docket No. 10-90 et al., filed Feb. 24, 2012 (clarifying previous filings and *ex parte* letters).

¹⁹ *Id.*

²⁰ Nex-Tech and other small wireless carriers support this interpretation of the *USF/ICC Transformation Order*. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Nex-Tech et al. Opposition to Petition for Clarification or, in the Alternative, For Reconsideration of Verizon (filed Feb. 9, 2012).

²¹ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, 25 FCC Rcd 12854, 12859-63, paras. 14-22 (2010) (*Corr Wireless Order*).

²² The clarification in this Order applies only to Verizon Wireless service areas subject to the merger commitments. Other service areas, including those for which Verizon Wireless does not possess controlling ownership, are subject to the general applicable phase down of support for competitive ETCs described in the *USF/ICC Transformation Order* and continue to remain outside the scope of the merger commitment.

²³ Similarly, Sprint will receive support in 2012 based on its merger commitment, as clarified by the *Corr Wireless Order*, and will not be subject to the general phase down. Sprint's total 2012 support will be the lesser of 20 percent of its 2008 support or the amount it would have received in 2012 for each ETC service area in the absence of its merger commitment and the *USF/ICC Transformation Order*. As a proxy for the amount Sprint would have received, USAC shall use the amount of support Sprint received in each ETC service area in 2011.

the phase down of competitive ETC support and dismisses Verizon's Petition to the extent it alternatively requests reconsideration of the same issue.

9. *Other Matters.* First, the Bureau amends the definition of "rate-of-return carrier" in section 54.5 of our rules to correct an erroneous cross-reference to the definition of price cap regulation.

10. Second, the Bureau dismisses in part the petition for reconsideration filed by the United States Telecom Association (US Telecom), which, among other things, asked the Commission to clarify that reductions in legacy support resulting from a failure to meet the urban rate floor will, at most, extend only to high-cost loop support and high-cost model support.²⁴

11. In the *USF/ICC Clarification Order*, the Bureaus addressed this issue by amending 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. The Bureaus further stated that the offset does not apply to frozen CAF Phase I support to the extent that it replaced IAS and ICLS.²⁵ Because the *USF/ICC Clarification Order* addressed this issue, the Bureau dismisses as moot that portion of the US Telecom petition for reconsideration.

III. PROCEDURAL MATTERS

A. Paperwork Reduction Act

12. This document 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

13. Final Regulatory Flexibility Certification. The Regulatory Flexibility Act of 1980, as amended (RFA),²⁶ 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."²⁷ The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²⁸ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²⁹ A small business concern is one which: (1) is independently owned and operated; (2) is

²⁴ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Petition for Reconsideration of US Telecom, at 14 (filed Dec. 29, 2011).

²⁵ *USF/ICC Clarification Order* at para. 3.

²⁶ 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).

²⁷ 5 U.S.C. § 605(b).

²⁸ 5 U.S.C. § 601(6).

²⁹ 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."

not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).³⁰

14. 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

15. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.³¹

IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 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, 0.201(d), 0.291, 1.3, and 1.427 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.201(d), 0.291, 1.3, 1.427 and pursuant to the delegation of authority in paragraph 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.

17. IT IS FURTHER ORDERED, that Parts 54 and 61 of the Commission's rules, 47 C.F.R. Parts 54, 61 are AMENDED as set forth in the Appendix A, and such rule amendments shall be effective 30 days after the date of publication of the rule amendments in the Federal Register.

18. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254, and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the Petition for Clarification or, in the Alternative, for Reconsideration of Verizon IS GRANTED IN PART AND DISMISSED IN PART and the Petition for Reconsideration of United States Telecom Association IS DISMISSED IN PART.

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

20. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

³⁰ Small Business Act, 15 U.S.C. § 632.

³¹ *See* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau

**APPENDIX
Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 54 and 61 to read as follows:

PART 54—UNIVERSAL SERVICE

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

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

Subpart A—General Information

2. Amend § 54.5 by revising the definition of “rate-of-return carrier” to read as follows.

* * * * *

Rate-of-return carrier. “Rate-of-return carrier” shall refer to any incumbent local exchange carrier not subject to price cap regulation as that term is defined in § 61.3(ee) of this chapter.

* * * * *

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403, unless otherwise noted.

2. Revise § 61.26(f) to read as follows:

§ 61.26 Tariffing of competitive interstate switched exchange access services.

* * * * *

(f) If a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services, except if the CLEC is listed in the database of the Number Portability Administration Center as providing the calling party or dialed number, the CLEC may, to the extent permitted by § 51.913(b), assess a rate equal to the rate that would be charged by the competing ILEC for all exchange access services required to deliver interstate traffic to the called number.

* * * * *