

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

**ORDER**

**Adopted: July 1, 2013**

**Released: July 1, 2013**

By the Deputy Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we grant in part and deny in part petitions by Frontier Communications Corporation (Frontier) and by Armstrong Telephone Company – Northern Division, Armstrong Telephone Company – West Virginia, Hardy Telecommunications, Inc., and Spruce Knob Seneca Rocks Telephone, Inc. (together, the West Virginia Rural Companies) for waiver of sections 54.313(a)(10) and 54.318(i).<sup>1</sup>

**II. BACKGROUND**

2. In the *USF/ICC Transformation Order*, the Commission adopted a rule, codified at section 54.318(i), to limit high-cost support for incumbent eligible telecommunications carriers (ETCs) where end-user rates do not meet a specified local rate floor.<sup>2</sup> Specifically, high-cost loop support (HCLS) and high-cost model support (HCMS) will be limited where a carrier's local end-user rates plus state-regulated fees (specifically, state SLCs, state universal service fees, and mandatory extended area service charges) do not meet an urban rate floor representing the national average of local rates plus those state regulated fees. The Commission sought to ensure that the universal service fund was not being used to subsidize local service rates that are significantly lower than the national urban average.<sup>3</sup> The rate floor was set at \$10 for the year beginning July 1, 2012, and \$14 for the year beginning July 1, 2013.<sup>4</sup> The

<sup>1</sup> See Frontier Communications Corporation Petition for Waiver of Sections 54.313(a)(10) and 54.318(i) of the Commission's Rules or for Rulemaking To Modify Section 54.318(i) of the Commission's Rules, WC Docket Nos. 10-90, 05-337 (filed Dec. 7, 2012) (Frontier Petition); Petition for Waiver by the West Virginia Rural Companies of Sections 54.313(a)(10) and 54.318(i) of the Commission's Rules or, in the alternative, Request for Temporary Waiver and Support for the Pending Request for Rulemaking To Modify Section 54.318(i) of the Commission's Rules, WC Docket Nos. 10-90, 05-337 (filed Feb. 5, 2013) (West Virginia Rural Companies Petition). We refer to Frontier and the West Virginia Rural Companies collectively as "the Petitioners."

<sup>2</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663, 18212-13, App. A, Section 54.318 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

<sup>3</sup> See *id.* at 17749-52, paras. 235-40.

<sup>4</sup> *Id.* at 17751, para. 239. The Wireline Competition Bureau (Bureau) subsequently clarified that support reductions based on rate floors offset frozen Connect America Fund Phase I support only to the extent that the recipient's frozen  
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*USF/ICC Transformation Order* also adopted a rule, codified at section 54.313(a)(10), requiring “all ETCs to submit a self-certification that the pricing of their voice services is no more than two standard deviations above the national average urban rate for voice service.”<sup>5</sup>

3. On December 7, 2012, Frontier filed a petition for waiver of sections 54.318(i) and 54.313(a)(10) of the Commission’s rules.<sup>6</sup> On February 5, 2013, the West Virginia Rural Companies requested similar waivers of sections 54.318(i) and 54.313(a)(10).<sup>7</sup> The Bureau released a Public Notice regarding each petition, requesting comments and reply comments.<sup>8</sup>

4. Frontier and the West Virginia Rural Companies argue that without a waiver of the rate floor requirements, there will be a reduction in high-cost universal service support for lines that are below the \$14 rate floor.<sup>9</sup> The companies all offer four local service options though the rate for each option varies by company.<sup>10</sup> The first plan (Plan 1) has a low fixed rate with measured service; the second plan (Plan 2) provides unlimited calling in the customer’s home exchange with measured service to other points in the local calling area; the third plan (Plan 3) offers unlimited calling in the home exchange and nearby exchanges with measured usage to other exchanges in the local calling area; and the fourth plan (Plan 4) allows unlimited calling within the local calling area.<sup>11</sup>

	Plan 1	Plan 2	Plan 3	Plan 4	Weighted Average
<b>Frontier</b>	\$7.00	\$15.50	\$22.00	\$29.00	Approx. \$25.00
<b>Armstrong Telephone Co. – Northern Division</b>	\$4.45	\$10.20	\$17.20	\$24.50	\$17.07
<b>Armstrong Telephone Co. – West Virginia</b>	\$5.00	\$11.00	\$20.00	\$34.00	\$22.63
<b>Hardy Telecommunications</b>	\$10.00	\$15.00	\$21.00	\$28.00	\$18.64
<b>Spruce Knob Seneca Rocks Telephone</b>	\$6.00	\$15.00	\$21.00	\$28.00	\$16.26

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CAF Phase I support replaced HCLS and HCMS. The offset does not apply to frozen Connect America Phase I support to the extent that it replaced IAS and ICLS. *Connect America Fund*, WC Docket No. 10-90 *et al.*, Order, 27 Rcd 605, 606, para. 3 (2012).

<sup>5</sup> *USF/ICC Transformation Order*, 26 FCC at 17855, para. 592.

<sup>6</sup> Frontier Petition at 1. The Frontier Petition also requested that the Commission initiate a rulemaking proceeding. That request is not addressed herein.

<sup>7</sup> West Virginia Rural Companies Petition at 1-2.

<sup>8</sup> *Wireline Competition Bureau Seeks Comment on the Frontier Communications Corporation Petition for Waiver of Certain High-Cost Universal Service Rules or for Rulemaking To Modify Section 54.318(i) of the Commission’s Rules*, WC Docket Nos. 10-90, 05-337, 28 FCC Rcd 165 (Wireline Comp. Bur. 2013); *Wireline Competition Bureau Seeks Comment on the the [sic] West Virginia Rural Companies Petition for Waiver of Certain high-Cost Universal Service Rules*, WC Docket Nos. 10-90, 05-337, 28 FCC Rcd 1067 (2013).

<sup>9</sup> Frontier Petition at 2-3, West Virginia Rural Companies Petition at 4-5.

<sup>10</sup> Frontier Petition, Attachment A; West Virginia Rural Companies Petition, Exhibit B. One company, Hardy Telecommunications, Inc., includes \$3.00 of local usage in its Plan 1. West Virginia Rural Companies Petition, Exhibit B at 2.

<sup>11</sup> *Id.*

Each Petitioner seeks a waiver so that it can use a weighted average of the price of all of its rate plans for the purposes of determining if the Petitioner meets the rate floor and rate comparability requirements in sections 54.318(i) and 54.313(a)(10).<sup>12</sup>

5. Frontier claims that enforcing the rate floor against Frontier will not serve the purpose of the rule, which, Frontier states, is “to ensure that ratepayers in high-cost areas pay a certain minimum amount in rates to support their own network before they receive federal universal service support contributed from other ratepayers around the country.”<sup>13</sup> Frontier asserts that because the average revenue produced by Frontier’s West Virginia basic local rates is almost \$25 per month, “Frontier’s current rates in West Virginia fully meet the purpose of the rule.”<sup>14</sup> In addition, Frontier states that its local rate plans present a circumstance justifying a waiver. Specifically, Frontier argues that its optional calling plans “allow customers to choose the local calling plan that best suits each customer’s needs”<sup>15</sup>

6. Frontier also states that its Plan 4 has been above the comparability benchmark in the past and will likely be above the rate comparability benchmark in the future. Frontier asserts that a weighted average of its rates “would not undermine the rule’s intent” and allows customers to choose to pay more to receive the benefits in Plan 4,<sup>16</sup> and therefore a waiver of the reasonable comparability requirement is justified.

7. The West Virginia Rural Companies request “effectively the same relief that is the subject of a similar request made by Frontier.”<sup>17</sup> They state that “the use of the ‘weighted average’ approach to the calculation of the rate floor and rate comparability requirements best achieves the relevant public policy considerations underlying the implicated Commission rules.”<sup>18</sup> The West Virginia Rural Companies note that the WVPSC determined over two decades ago that it is in the public interest for carriers to offer multiple basic local rate plans, and that it supports a waiver.<sup>19</sup>

### III. DISCUSSION

8. Generally, the Commission’s rules may be waived for good cause shown.<sup>20</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>21</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>22</sup> Waiver of the

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<sup>12</sup> Frontier Petition at 1; West Virginia Rural Companies Petition at 1.

<sup>13</sup> Frontier Petition at 3.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 5-7.

<sup>16</sup> *Id.* at 6, 8.

<sup>17</sup> West Virginia Rural Companies Petition at i.

<sup>18</sup> *Id.* at 7.

<sup>19</sup> *Id.* at 8.

<sup>20</sup> 47 C.F.R. § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”).

<sup>21</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>22</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>23</sup>

9. *Rate floor.* We decline to adopt a waiver of section 54.318(i) to allow the Petitioners to use a weighted average of local rates for the purpose of determining whether local rates meet the rate floor requirement. However, we do waive application of section 54.318(i) to lines of Lifeline customers and allow Petitioners to maintain rate plans with rates below the rate floor without losing any high-cost support (either Phase I frozen support for Frontier or HCLS for the West Virginia Rural Companies) for Lifeline-supported lines. To allow providers to work with the WVPSC and make necessary adjustments, we grant a limited six-month waiver for Petitioners of the June 1st sampling date for reporting rates that are under the \$14 local rate floor.<sup>24</sup>

10. We do not agree that use of a weighted average is consistent with the purpose of section 54.318(i). Petitioners argue that according to the *USF/ICC Transformation Order*, the purpose of the rate floor requirement is “to ensure that the universal service fund was not being used to subsidize local service rates that are significantly lower than the national urban average”<sup>25</sup> and that use of a weighted average is consistent with this because it “allows the same averaging to occur on an intra-company basis”<sup>26</sup> and ensures that states are contributing to universal service support.<sup>27</sup> Although requiring state contributions to universal service is one purpose of the rate floor, the Commission made clear that another goal was to ensure “that consumers are not contributing to the Fund to support customers whose rates are below a reasonable level.”<sup>28</sup> The Commission specifically noted that some states had \$5 local rates and lower, and it concluded that Congress did not intend “to create a regime in which universal service subsidizes artificially low rates in rural areas when it adopted the reasonably comparable principle in section 254(b).”<sup>29</sup> The Commission further stated that “we do not believe it is equitable for consumers across the country to subsidize the cost of service for some consumers that pay local service rates that are significantly lower than the national urban average.”<sup>30</sup>

11. The waiver Petitioners seek would continue to allow some consumers to pay substantially less than the urban average rate, in some cases as low as \$4.45. We believe that this is precisely the situation the Commission was trying to eliminate with adoption of a rate floor. We are not persuaded that the fact that some, or even a majority, of customers in West Virginia have chosen local rate plans substantially above the rate floor of \$14 warrants a waiver of section 54.318(i), or as ITTA claims, that granting a waiver would not burden the Commission's universal service programs because Frontier would receive the same amount of legacy high-cost support in 2013 that it received in 2012.<sup>31</sup> As the Commission has explained, “[w]hile individual consumers in those areas may benefit from such low rates, when a carrier uses universal service support to subsidize local rates well below those required by the Act,

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<sup>23</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>24</sup> *See infra* para. 17.

<sup>25</sup> West Virginia Rural Companies Petition at 10 (*quoting Connect America Fund*, WC Docket No. 10-90 *et al.*, Third Order on Reconsideration, 27 FCC Rcd 5622, 5628, para. 15 (2012)).

<sup>26</sup> West Virginia Rural Companies Petition at 10.

<sup>27</sup> Frontier Petition at 3.

<sup>28</sup> *USF/ICC Transformation Order*, 26 FCC at 17751, para. 238.

<sup>29</sup> *Id.* at 17750, para. 235.

<sup>30</sup> *Id.* at 17751, para. 237.

<sup>31</sup> ITTA Comments (filed Feb. 11, 2013) at 7.

the carrier is spending universal service funds that could potentially be better deployed to the benefit of consumers elsewhere.”<sup>32</sup>

12. We are not convinced that use of a weighted average for the rate floor requirement will ensure that universal service support is targeted to those who need it most. The WVPSC states that it supports the Petitions because without the waiver there is “an incentive to increase rates on lower tier telephone packages for a segment of essentially captive customers without competitive alternatives, many of whom are the elderly and low income customers.”<sup>33</sup> However, the comparability requirement in section 54.313(a)(10) is designed to ensure that local rates in areas supported by universal service funding are reasonably comparable to rates in urban areas, where there typically are competitive alternatives. Maintaining artificially low rates for some customers through cross-subsidies among the rate plans may perversely contribute to a lack of competitive alternatives for consumers that prefer a lower cost plan.

13. Moreover, the fact that West Virginia has implemented a tiered rate structure for all carriers in the state, or that the weighted average is above this year’s rate floor is not dispositive. If we were to allow the use of a weighted average, other carriers that similarly have an array of service offerings at varying prices would no longer be subject to the rate floor rule. Indeed, it would be unfair to carriers in other states if we were to allow the use of a weighted average in this instance.<sup>34</sup> Given the Commission’s specific reference to *individual* consumers, we conclude it did not intend to allow carriers to rely upon a weighted average of *all* customers in a study area when determining compliance with the rate floor rule.

14. The WVPSC argues that even if inexpensive rates are subsidized by universal service funding, “the result is merely the extension of service to customers that the Commission probably intended to reach through other means such as the Lifeline program” and that some customers may be attracted to low-rate plans rather than Lifeline because some customers shun direct federal subsidies.<sup>35</sup> In this instance, however, the rate structure employed is not narrowly tailored to provide lower rates just for Lifeline subscribers. In particular, the Petitioners’ low-rate plans are not restricted to consumers meeting certain income requirements; rather, these plans are available to any customer. Even if some of the consumers that take advantage of these plans might qualify for Lifeline, other non-low-income consumers may also be subscribing to these below-average rate plans. Therefore, such plans do not necessarily target support to those consumers who are eligible for the Lifeline program, and continuing to support

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<sup>32</sup> *USF/ICC Transformation Order*, 26 FCC at 17750, para. 235 n.378 (citation omitted).

<sup>33</sup> WVPSC Comments (filed Feb. 27, 2013) at 7; WVPSC Comments (filed Feb. 5, 2013) at 6.

<sup>34</sup> We note that carriers in a number of states have increased their rates to comply with the *USF/ICC Transformation Order*. See, e.g., *FCC USF Reform Causes Texas Telcos to Seek Millions in Relief from PUC*, COMMUNICATIONS DAILY, Apr. 4, 2013, at 5-7 (Hill Country Telephone Cooperative raising local rates from \$9.40 to \$14 effective May 1, 2013); Customer Notice, LAKE LIVINGSTON TEL. CO. (2013), <http://www.lakelivingstontel.com/Customer%20Notice%202013.pdf> (Lake Livingston Telephone Company notification to customers that it would be raising rates from \$9.95 to \$13.95 effective June 1, 2013); *Pioneer Telephone Company, Seeking Exemption from the Provisions of WAC 480-07-510 (General Rate Proceedings)*; or, *in the alternative, WAC 480-120-339 (Streamlined Filing Requirements for Class B Telecommunications Company Rate Increases)*, Docket UT-120129, Order Granting Exemption from Rule and Allowing Tariff Revision to Become Effective by Operation of Law (Mar. 29, 2012), <http://www.wutc.wa.gov/RMS2.nsf/177d98baa5918c7388256a550064a61e/730de76ee8f5a795882579d0005f4ab5!OpenDocument> (Washington State company raising rates from \$10 to \$14); *Ballard Telephone Cooperative Customer Notification*, PHONE FACTS (Ballard Tel. Coop.), June 2013, at 1, [http://www.brtc.net/files/BTC\\_Newsletter\\_june2013.pdf](http://www.brtc.net/files/BTC_Newsletter_june2013.pdf) (Kentucky cooperative notification of intent to raise rates to \$14 to meet rate floor, effective June 1, 2013).

<sup>35</sup> WVPSC Comments (filed Feb. 27, 2013) at 5; WVPSC Comments (filed Feb. 5, 2013) at 4.

low-rate plans for non-Lifeline subscribers would not be an efficient use of federal universal service funds.

15. *Lifeline Customers.* The Commission has consistently emphasized its commitment to ensuring that its reforms do not negatively impact Lifeline customers.<sup>36</sup> In addition, states can implement intrastate support measures to supplement federal Lifeline support. Although we conclude that maintaining below-average rate offerings is inconsistent with the purposes behind the rate floor rule, we recognize the unique circumstance here, where the state has adopted four rate plans with several options well above the rate floor, with the express purpose of enabling low-income consumers to purchase basic telephone service.<sup>37</sup>

16. Consistent with the Commission's framework allowing support for Lifeline subscribers and West Virginia's state goal of providing a low-cost option for low-income consumers, we waive the application of section 54.318(i) to Petitioners' customers who are enrolled in the Lifeline program. This will allow Petitioners to continue to offer rate plans that do not meet the rate floor requirement to Lifeline customers without losing high-cost support for those lines. Allowing Petitioners to maintain rate plans that are priced below the rate floor for Lifeline subscribers strikes the appropriate balance between ensuring that consumers across America are not funding below-average rates for selected consumers in West Virginia, while providing targeted relief to ensure these reforms do not negatively impact Lifeline subscribers. This is consistent with the WVPSC's goal of ensuring that those with low incomes have access to affordable telephone service.<sup>38</sup>

17. In light of our decision not to apply the rate floor rule to Lifeline-supported lines, we grant a limited six-month waiver for Petitioners of the June 1st sampling date for reporting rates that are under the \$14 local rate floor. We believe this waiver will provide an opportunity for the affected carriers to determine whether, in light of West Virginia's expressed desire to maintain a lower-cost rate plan for low-income consumers, to retain the current Plan 1 rate for Lifeline customers. This limited waiver also will provide time for the affected carriers to work with the WVPSC to seek adjustments to the Plan 1 rate for non-Lifeline customers currently subscribing that plan, while following any WVPSC processes for notifying any affected customers. After the expiration of this six-month waiver, if Petitioners continue to offer rate plans that are priced below the rate floor to non-Lifeline subscribers, they must report those lines pursuant to section 54.313(h) and will lose high-cost universal service support on a dollar-for-dollar basis for those lines, consistent with the *USF/ICC Transformation Order*.<sup>39</sup>

18. *Comparability requirement.* We decline to adopt a waiver of section 54.313(a)(10) because we do not believe that one is necessary to address the concern raised by Petitioners. As in the past, recipients of high-cost support may offer their customers varying rate plans that may include different calling areas and services. As long as a carrier offers at least one voice service offering that meets the rate comparability requirement, it is in compliance with section 54.313(a)(10). Therefore, consistent with

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<sup>36</sup> See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 18066, para. 1102 (emphasizing ongoing commitment to ensuring Lifeline consumers have access to service); *Lifeline and Link Up Reform and Modernization*, 27 FCC Rcd 6656, 6659, para. 1 (2012) (emphasizing importance of "ensuring that eligible low-income consumers who do not have the means to pay for telephone service can maintain their current voice service through the Lifeline program").

<sup>37</sup> See, e.g., Frontier Petition at 7; WVPSC Comments (filed Feb. 27, 2013) at 4; WVPSC Comments (filed Feb. 5, 2013) at 4; ITTA Comments at 6; NTCA Comments at 4.

<sup>38</sup> WVPSC Comments (filed Feb. 5, 2013) at 4-5.

<sup>39</sup> *USF/ICC Transformation Order*, 26 FCC at 17739, para. 197.

long standing Commission precedent, if one of a Petitioner's four rate plans meets the comparability standard, the rates of the remaining plans need not be considered.<sup>40</sup>

#### IV. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 201-205, 218-220, 254, 303(r), 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), 155, 201-205, 218-220, 254, 303(r), 403, and 1302, sections 0.91, 0.201(d), 0.291, and 1.427 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.201(d), 0.291, and 1.427 that the Petition for Waiver of Sections 54.313(a)(10) and 54.318(i) of the Commission's Rules or for Rulemaking To Modify Section 54.318(i) of the Commission's Rules filed by Frontier Communications Corporation and the Petition for Waiver by the West Virginia Rural Companies of Sections 54.313(a)(10) and 54.318(i) of the Commission's Rules or, in the alternative, Request for Temporary Waiver and Support for the Pending Request for Rulemaking To Modify Section 54.318(i) of the Commission's Rules filed by Armstrong Telephone Company – Northern Division, Armstrong Telephone Company – West Virginia, Hardy Telecommunications, Inc., and Spruce Knob Seneca Rocks Telephone, Inc. Telephone Company IS GRANTED IN PART and DENIED IN PART to the extent described herein.

20. IT IS FURTHER ORDERED, pursuant to the authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Deputy Chief  
Wireline Competition Bureau

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<sup>40</sup> See, e.g., *Federal-State Joint Board on Universal Service*, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, 22612, para. 88 (2003) (stating that alternate incumbent rate plans need not be formally compared to the nationwide urban rate benchmark).