

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

**ORDER**

**Adopted: December 22, 2014**

**Released: December 22, 2014**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, the Wireline Competition Bureau (Bureau) hereby dismisses petitions for reconsideration of the *April 2014 Connect America Order/FNPRM*<sup>1</sup> filed by the National Exchange Carrier Association, NTCA – The Rural Broadband Association, the Eastern Rural Telecom Association, and WTA – Advocates for Rural Broadband (Rural Associations)<sup>2</sup> and the United States Telecom Association (USTelecom).<sup>3</sup> The Bureau finds that the Joint Petition and one of the requests in the USTelecom Petition are untimely.<sup>4</sup> In addition, the other request in the USTelecom Petition was neither presented to the Commission prior to this Petition nor addressed by the Commission in its *Order* and is therefore not properly subject to reconsideration.<sup>5</sup>

<sup>1</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051 (2014) (*April 2014 Connect America Order/FNPRM*).

<sup>2</sup> Petition for Reconsideration, National Exchange Carrier Association et al., WC Docket No. 10-90 et al. (filed Aug. 4, 2014) (Joint Petition).

<sup>3</sup> Petition for Reconsideration, United States Telecom Association, WC Docket No. 10-90 et al. (filed Aug. 8, 2014) (USTelecom Petition). The USTelecom Petition asked for reconsideration of three issues, the second and third of which we address herein. The first issue was addressed in a recent Commission order. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, FCC 14-190, para. 115 n.253 (rel. Dec. 18, 2014) (*December 2014 Connect America Order*).

<sup>4</sup> Under section 1.429(1), petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant Bureau. Examples of such petitions include petitions that are untimely. 47 C.F.R. § 1.429(1)(9).

<sup>5</sup> Under section 1.429(1)(2), petitions for reconsideration that rely on facts or arguments that have not previously been presented to the Commission may be dismissed or denied by the relevant Bureau. 47 C.F.R. § 1.429(1)(2).

## II. BACKGROUND

2. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost program within the universal service fund.<sup>6</sup> As part of that reform, high-cost support is reduced in areas where end-user rates for voice service are below a specified local rate floor.<sup>7</sup> The Commission explicitly stated that the rate floor was to be the national average of urban local rates plus certain state regulated fees and was to be calculated based on a survey of urban rates to be conducted by the Bureau.<sup>8</sup>

3. The Bureau issued a Public Notice announcing the results of the urban voice rate survey in March 2014<sup>9</sup> and soon thereafter released the data that was collected through the rate survey.<sup>10</sup> In the *April 2014 Connect America Order/FNPRM*, the Commission adopted a limited waiver of the rule requiring support reductions for lines with rates below the rate floor, concluding those reductions should be phased in over a more gradual time period.<sup>11</sup>

4. On August 4, 2014, the Rural Associations filed a petition for reconsideration asking the Commission to reconsider the methodology for establishing the rate floor.<sup>12</sup> The Rural Associations argue that the rate floor should be set at least one standard deviation below the national urban average, rather than at the national urban average, to permit the Commission to use smaller increments for the phase-in, or shorten the overall phase-in period.<sup>13</sup> On August 8, 2014, USTelecom requested that the Commission reconsider the schedule for the voice pricing data collection portion of the Urban Rate Survey,<sup>14</sup> arguing that the Survey is burdensome and unnecessary until the last year of the phase-in of reductions in high-cost support adopted in the *Order*.<sup>15</sup> USTelecom further asks the Commission to reconsider its decision to waive application of section 54.318(i) of the Commission's rules to only Lifeline customers.<sup>16</sup> USTelecom argues that this waiver should extend to "vacation lines" and "warm lines" because these type of services are not reasonably comparable services for purposes of reducing support due to rates below the local rate floor.<sup>17</sup>

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<sup>6</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 26 FCC Rcd 17663 (2011), *aff'd*, 753 F.3d 1015 (10th Cir. 2014) (*USF/ICC Transformation Order*).

<sup>7</sup> *Id.* at 17749, para. 235; 47 C.F.R. § 54.318.

<sup>8</sup> *Id.* at 17751, 17753, para. 238, 243.

<sup>9</sup> *Wireline Competition Bureau Announces the Results of Urban Rate Survey for Voice Services; Seeks Comment on Petition for Extension of Time to Comply with New Rate Floor*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 2967 (Wireline Comp. Bur. 2014).

<sup>10</sup> *Wireline Competition Bureau Announces Posting of Voice Data from Urban Rate Survey, and Explanatory Notes*, WC Docket No. 10-90, 29 FCC Rcd 3892 (Wireline Comp. Bur. 2014).

<sup>11</sup> *April 2014 Connect America Order/FNPRM*, 29 FCC Rcd at 7075-82, paras. 73-86.

<sup>12</sup> Joint Petition at 7.

<sup>13</sup> *Id.* at 8-9.

<sup>14</sup> USTelecom Petition at 4-6.

<sup>15</sup> *See id.*

<sup>16</sup> *See id.* at 6-8.

<sup>17</sup> *See id.* at 6-7.

### III. DISCUSSION

#### A. Joint Petition

5. The Joint Petition constitutes an untimely petition for reconsideration of the *USF/ICC Transformation Order*. The Rural Associations admit that they are not seeking reconsideration of the Commission's decision in the *April 2014 Connect America Order/FNPRM* to phase in more gradually support reductions related to the rate floor.<sup>18</sup> Instead, they are seeking reconsideration of the decision to set the rate floor at the national urban average, rather than at one or two standard deviations below that average.<sup>19</sup> The decision to use an average rather than some standard deviation below the average was made by the Commission in the 2011 *USF/ICC Transformation Order*. The window for requesting reconsideration of that Order closed over two years ago. Thus, the Joint Petition is untimely.<sup>20</sup>

6. The Rural Associations contend that they are not challenging the *USF/ICC Transformation Order*, but rather they "seek reconsideration of the [*April 2014 Connect America Order/FNPRM*] insofar as it reaffirms the Bureau's use of a weighted averaging method to produce the rate floor."<sup>21</sup> This argument is unavailing. A petition under section 1.429 may only seek reconsideration of a "final action."<sup>22</sup> A reaffirmation, or restatement, of a previously adopted rule does not constitute a "final action" from which reconsideration can be sought and has no independent legal significance. To decide otherwise would subject a rule to reconsideration any time the rule was mentioned or described in a subsequent Commission order.

7. To the extent that the Joint Petition is seeking reconsideration or review of the Bureau's calculation of the weighted average, it still fails. The Bureau did not adopt use of the average urban rate for the rate floor; that decision was made by the Commission.<sup>23</sup> As the Commission has previously stated, the Bureau's implementation of Commission decisions does not reopen those earlier Commission decisions.<sup>24</sup> Even if the Bureau had made such a decision on delegated authority, the deadline to seek reconsideration of that decision passed on May 19, 2014.

8. For the foregoing reasons, we conclude that the Joint Petition is an untimely petition for reconsideration of the *USF/ICC Transformation Order* and is dismissed.

#### B. USTelecom Petition

9. USTelecom's request that the Commission refrain from conducting its annual Urban Rate Survey until the phase-in of support reductions is complete constitutes an untimely request for reconsideration of the *USF/ICC Transformation Order*.<sup>25</sup> To support its argument, USTelecom points to the Commission's directive to the Bureau in the *April 2014 Connect America Order/FNPRM* to conduct the Urban Rate Survey by a specified time each year for the next several years so as to announce the rate

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<sup>18</sup> Joint Petition at 6 ("This Petition does not seek reconsideration of the Commission's decision to phase-in support reductions associated with the urban rate floor.").

<sup>19</sup> *Id.* at 7.

<sup>20</sup> Petitions for reconsideration must be filed within 30 days from the date of public notice of the Commission's action. 47 C.F.R. § 1.429(d).

<sup>21</sup> *Id.*

<sup>22</sup> 47 C.F.R. § 1.429(a).

<sup>23</sup> See *April 2014 Connect America Order/FNPRM*, 29 FCC Rcd at 7075-82, paras. 73-86.

<sup>24</sup> *Id.* at 7086, para. 102 ("[R]eview of a Bureau decision implementing a Commission directive may not be used as a vehicle to seek reconsideration of the Commission's earlier decision.").

<sup>25</sup> USTelecom Petition at 4-6.

floor in a timely fashion.<sup>26</sup> However, the Commission merely was specifying when in the calendar year the Urban Rate Survey should occur, rather than whether the Survey should occur on an annual basis.<sup>27</sup> The 2011 *USF/ICC Transformation Order* directed the Bureau and the Wireless Telecommunications Bureau to conduct the Urban Rate Survey on an annual basis.<sup>28</sup> Therefore, the window for requesting reconsideration of the Commission's decision to conduct the Urban Rate Survey on an annual basis closed over two years ago, and USTelecom's request for reconsideration of the issue is untimely.<sup>29</sup>

10. Finally, USTelecom asserts that the Commission should include both "vacation lines" and "warm lines" within its waiver of section 54.318(i) support reductions.<sup>30</sup> To ensure that support reductions for rates below the rate floor do not negatively affect Lifeline customers, the Commission waived application of section 54.318(i) for lines provided to customers enrolled in the Lifeline program.<sup>31</sup> However, the Commission has never considered whether the waiver of the application of section 54.318(i) should include either "vacation lines" or "warm lines"<sup>32</sup> nor can we find any reference to "vacation lines" or "warm lines" in the record of this proceeding. Because these issues have not been raised in the record and the Commission has had no opportunity to address these arguments, the petition for reconsideration of this issue is dismissed pursuant section 1.429(l)(2) of the Commission's rules.<sup>33</sup>

11. Accordingly, IT IS ORDERED, pursuant to the authority in sections 0.91 and 1.429 of the Commission's rules, 47 C.F.R. §§ 0.91, 1.429, that the Rural Associations' Petition for Reconsideration filed by the National Exchange Carrier Association et al. is DISMISSED as untimely.

12. IT IS FURTHER ORDERED pursuant to the authority in sections 0.91 and 1.429 of the Commission's rules, 47 C.F.R. §§ 0.91, 1.429, that the Petition for Reconsideration filed by the United States Telecom Association is DISMISSED as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach  
Chief  
Wireline Competition Bureau

<sup>26</sup> See *id.* at 5; see also *April 2014 Connect America Order/FNPRM*, 29 FCC Rcd at 7079, para. 80.

<sup>27</sup> In directing the Bureau to determine the time in which the Urban Rate Survey should take place, the Commission stated "[e]ffective July 1, 2016, the rate floor will be determined by the next urban rate survey. We direct the Bureau to conduct the next survey in sufficient time to announce the results in early 2015 and to announce the 2016 rate floor no later than January 31, 2016." See *April 2014 Connect America Order/FNPRM*, 29 FCC Rcd at 7081, para. 84.

<sup>28</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17694, para. 85.

<sup>29</sup> Petitions for reconsideration must be filed within 30 days from the date of public notice of the Commission's action. 47 C.F.R. § 1.429(d).

<sup>30</sup> USTelecom Petition at 6-8. To the extent that the USTelecom Petition could be viewed as a request for waiver, there is insufficient information to determine whether the waiver standard is met.

<sup>31</sup> See *April 2014 Connect America Order/FNPRM*, 29 FCC Rcd at 7081, para. 85.

<sup>32</sup> See *id.*

<sup>33</sup> 47 C.F.R. § 1.429(l)(2).