

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In the Matter of</b>	)	
	)	
<b>CONNECT AMERICA FUND</b>	)	<b>WC Docket No. 10-90</b>
	)	
<b>HIGH-COST UNIVERSAL SERVICE SUPPORT</b>	)	<b>WC Docket No. 05-337</b>
	)	

**COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS  
ALLIANCE IN SUPPORT OF FRONTIER COMMUNICATIONS CORPORATION'S  
PETITION FOR WAIVER**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its comments in support of the Petition for Waiver filed by Frontier Communications Corporation (“Frontier”) on December 7, 2012 in the above-captioned proceedings.<sup>1</sup> In its petition, Frontier seeks relief from certain rules adopted in the *USF/ICC Transformation Order* that, when applied with respect to Frontier’s West Virginia service plans offering customers a range of service options at different price points, would result in an annual loss of approximately \$1.5 million or more in universal service support for Frontier and significantly hinder its ability to bring the benefits of broadband to rural consumers.<sup>2</sup>

Specifically, Frontier requests a waiver of Section 54.318(i) of the Commission's rules, which defines the method by which the Commission determines if an incumbent local exchange carrier (“ILEC”) has met the rate floor requirements set forth in the *Order*.<sup>3</sup> Frontier also requests a waiver of Section 54.313(a)(10) of the Commission’s rules, which sets forth the rate

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<sup>1</sup> 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”).

<sup>2</sup> *In the Matter of Connect America Fund, et al.*, WC Docket Nos. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (rel. Nov. 18, 2011) (“*USF/ICC Transformation Order*”).

<sup>3</sup> 47 C.F.R. § 54.318(i).

comparability reporting requirements established in the *Order*.<sup>4</sup> In the alternative, Frontier seeks a temporary waiver of Sections 54.318(i) and 54.313(a)(10) while the Commission conducts a rulemaking to adopt appropriate modifications that would provide an additional method for establishing local rates above the rate floor and assessing rate comparability when a carrier's customers may select from optional service plans with varying rate structures.

As demonstrated below, grant of the relief requested is justified because it would serve the public interest. Furthermore, allowing a waiver in these unique circumstances would not frustrate the purpose of either rule. Therefore, the Commission should grant Frontier a waiver of Sections 54.318(i) and 54.313(a)(10) without further delay, or in the alternative, provide Frontier with temporary relief from such requirements while it undertakes a proceeding to revise its rules in the manner Frontier has requested.

### **DISCUSSION**

Under the Commission's rules, a waiver for good cause is appropriate if special circumstances warrant a deviation from the general rule and strict compliance with the rule would be inconsistent with the public interest.<sup>5</sup> With respect to the first prong of the two-part test, special circumstances arise in this case because the application of the Commission's rate floor and rate comparability requirements to Frontier's local service plans in West Virginia will lead to significant reductions in high-cost universal service support for Frontier and deprive its West Virginia customers the freedom to choose from a variety of service and pricing options without furthering the purpose of either rule.

Frontier offers its West Virginia subscribers four different service plans at different price points to enable them to choose the option best suited to their needs. All of Frontier's West

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<sup>4</sup> 47 C.F.R. § 54.313(a)(10).

<sup>5</sup> 47 C.F.R. § 1.3. See generally *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

Virginia customers enjoy a very large local calling area and have the option to choose among the four service offerings regardless of whether they live in an urban or rural area. These offerings range from Plan 1, which is \$7 per month plus an average of about \$3 in per-minute charges for all calls, to Plan 4, which is a \$29 unlimited flat-rate plan that includes all calls in the monthly rate.<sup>6</sup> Only about 13% of Frontier’s customers subscribe to Plan 1, while the vast majority of Frontier’s customers – 87% – subscribe to one of the other three plans. In fact, most West Virginia customers (69%) choose Frontier’s most expensive calling plan – Plan 4 – to take advantage of an all flat-rate service and eliminate charges for individual calls. On average, the monthly revenue per line produced by all four calling plans offered in West Virginia is approximately \$25.

The Commission’s rate floor rule, which reduces high-cost universal support dollar-for-dollar to the extent an ILEC’s local rates are below the applicable minimum rate,<sup>7</sup> appears to require that each rate plan offered by an ILEC in a particular state be above the urban rate floor established by the Commission in order for an ILEC to avoid reductions in high-cost support.<sup>8</sup> The Commission established the rate floor because “[i]t is inappropriate to provide federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable

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<sup>6</sup> Plan 2, which is \$15.50, is a combination of flat rate service and measured service to exchanges outside the caller’s home exchange.

<sup>7</sup> The Commission’s urban rate floor was set at \$10 in 2012 and rises to \$14 in 2013. After July 1, 2014, the rate floor will reflect the “national average urban rate” as determined by an annual rate survey conducted by the Wireline Competition Bureau. *See USF/ICC Transformation Order* at ¶ 243. The most recent national average urban rate, established in 2008, was \$15.62 per month. *See id.* at ¶¶ 236, 243, and n. 380.

<sup>8</sup> *See* 54 C.F.R. § 54.318(b). *See also Connect America Fund*, Third Order on Reconsideration, 27 FCC Rcd 5622, ¶ 22 (2012) (holding that when local measured service rates are part of state rate plans, the local service rate reported by an ILEC “should reflect the basic rate for local service plus the additional charges incurred for measured service, using the mean number of minutes or message units for all customers subscribing to that rate plan multiplied by the applicable rate per minute or message unit”) (footnote omitted).

comparability” and inequitable “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>9</sup> In other words, the purpose of this requirement “is to ensure that ratepayers in high-cost areas within a state 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>10</sup>

When this rule is applied to Frontier’s Plan 1 for 2013, Frontier will lose approximately \$1.5 million in high-cost universal service support because the plan falls below the \$14 urban rate floor. Yet, when one considers that the average monthly revenue per line is \$25 for all service plans in West Virginia, this result does not square with the purpose underlying the rate floor rule. Frontier and its customers should not be penalized if an individual service plan falls below the rate floor when the average revenue per line produced by all calling plans in a state is well in excess of the \$14 rate floor and is more than 50% higher than the most recently published national urban rate. Moreover, Frontier’s most popular calling plan in West Virginia – Plan 4 at \$29 per month – is double the rate floor and well above the national average urban rate.<sup>11</sup> When viewed as a weighted average, the revenue from all of Frontier’s local service plans ensures that West Virginia consumers are providing more than adequate support for the local network before any support contributed by other ratepayers kicks in.

The loss of such a significant amount of universal service support based on the mechanical application of the FCC’s rules to a service plan to which only a small percentage of Frontier’s customers subscribe undermines the Commission’s goal to spur broadband

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<sup>9</sup> *USF/ICC Transformation Order* at ¶ 236.

<sup>10</sup> Frontier Petition at 3.

<sup>11</sup> *Id.* at 3-4.

deployment and adoption in high-cost areas. Furthermore, the impact associated with such dramatic reductions in support will only be more pronounced in subsequent years to the extent the rate floor increases and additional Frontier service plans fall below the applicable rate floor.

This problem is compounded when the Commission's rate comparability rules are applied to Frontier's Plan 4 service plan. Specifically, when the federal subscriber line charge ("SLC") is added to the \$29 flat rate for Plan 4, the total amount exceeds the \$30 residential rate ceiling established by the Commission in the *USF/ICC Transformation Order*. As a result, Frontier is prevented from imposing an Access Recovery Charge ("ARC") on residential customers in West Virginia, further reducing the amount of support available for service in rural, high-cost areas within the state.

The purpose of the FCC's rate comparability rules is to ensure that consumers throughout the U.S. pay reasonably comparable rates for voice service. However, Frontier's provision of multiple service plans with different prices is not mandatory, and although the rate for Plan 4 is above the rate comparability benchmark, "Frontier customers voluntarily choose to pay more for Plan 4 in order to receive the benefits of that plan."<sup>12</sup> Thus, "[j]ust as comparing Frontier's Plan 1 rate to the rate floor does not produce a fair result which is consistent with the intent of the Commission's rules, neither does the comparison of Frontier's Plan 4 rate to the rate comparability benchmark achieve a just or rational outcome."<sup>13</sup> It would make more sense for the Commission to allow Frontier to use a weighted average of the rates for all four calling plans in West Virginia to determine its compliance with the Commission's rate comparability requirement.

Based on the special circumstances at issue here, good cause exists to provide Frontier

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<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.*

with a waiver of the Commission’s rate floor and rate comparability reporting requirements as set forth in Sections 54.318(i) and 54.313(a)(10) of the rules. So long as the average revenue per line produced by Frontier’s local service rates within West Virginia exceeds the applicable rate floor, the rate for an individual service plan that falls below the threshold should not trigger any reductions in Frontier’s high-cost universal service support. Similarly, Frontier should be able to certify that the rate of each of its four West Virginia service plans are within two standard deviations of the applicable national average urban rate for voice service as long as the weighted average of all its local rates in the state satisfies the rate comparability requirement.

As for the second prong of the two-part test, providing the relief requested would serve the public interest because it would avoid the “perverse result” of forcing Frontier to either raise the base rate of Plan 1 – its most economical service plan and the plan most favored by Frontier’s Lifeline subscribers – or forgo receiving approximately \$1.5 million in high-cost universal service support based on the rate floor established for 2013.<sup>14</sup> Strict application of the rule in these circumstances would mean higher rates for all Plan 1 customers, including Lifeline customers, or the loss of the benefits to be derived from high-cost support in the form of expanded broadband service in rural, high-cost areas of West Virginia.

Likewise, strict application of the rate comparability benchmark to Frontier’s Plan 4 service offering would be contrary to the public interest because it would eliminate the option chosen by 69% of Frontier’s West Virginia customers, who willingly pay a higher flat rate for all calls within the very large local calling area.

It would be far preferable for the Commission to allow Frontier to use a weighted average of rates for all four of its West Virginia calling plans for purposes of meeting the rate floor and

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<sup>14</sup> *Id.* at 7.

rate comparability requirements. Doing so would serve a number of public service benefits while not undermining the purpose of either rule.

As explained above, the Commission's rate floor requirement is designed to ensure that ratepayers within the local service area contribute a minimum amount of support to the network before they receive federal universal service support. Frontier's local rate plans in West Virginia produce far more than the minimum revenue expected by the Commission for the support of local networks by local ratepayers.

Similarly, the Commission's rate comparability benchmark seeks to ensure that consumers across the country pay reasonably comparable rates for voice service. Frontier's West Virginia customers are not required to subscribe to any particular service option at any particular rate; rather, they are free choose among a variety of service plans based on their individual needs. The fact that a majority of Frontier's customers have chosen Frontier's most expensive calling plan when there are several other service plans with rates below the rate comparability benchmark reflects the value they associate with that option. Providing the requested relief would serve the public interest by encouraging the provision of consumer-oriented service plans that allow subscribers to choose from among a variety of service options according to their individual calling needs.

Moreover, grant of the requested relief would do no harm to the Commission's universal service programs or other recipients of universal service support, since Frontier would receive the same amount of legacy high-cost support in 2013 that it received in 2012. Indeed, ensuring that Frontier will receive sufficient, predictable support to which it should be entitled will further the purpose of the Connect America Fund to accelerate broadband buildout and close the rural-

rural divide by enabling providers to bring the benefits of broadband to Americans who lack such access today.<sup>15</sup>

A central focus of the Commission’s regulatory agenda is to facilitate universal broadband access and adoption for all Americans, particularly for consumers in rural areas such as those where Frontier and similar providers offer service.<sup>16</sup> As the Commission has recognized, “[a]ccess to robust broadband service is “crucial to our nation’s economic growth, global competitiveness, and civic life. Businesses need broadband to attract customers and employees, job-seekers need broadband to find jobs and training, and children need broadband to get a world-class education.”<sup>17</sup> Indeed, the job opportunities broadband access makes available “are critical to our nation’s economic recovery and long term economic health, particularly in small towns... [and] rural and insular areas.”<sup>18</sup>

Thus, the Commissions should waive its rules to allow Frontier to demonstrate that it meets the rate floor and rate comparability requirements using a weighted average of all its local rates in West Virginia. Given the importance of the goal of universal broadband access, no policy basis exists to deny the narrow relief requested by Frontier when it would help achieve the Commission’s broadband deployment and adoption objectives.

In today’s economy, access to broadband means access to jobs and economic opportunity, in addition to better education and healthcare. And for all Americans, particularly consumers in the most rural areas of the country, broadband access means “a better way of

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<sup>15</sup> *USF/ICC Transformation Order* at ¶ 22.

<sup>16</sup> *See id.* at ¶ 5.

<sup>17</sup> *Id.* at ¶ 3 (internal citations omitted).

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

life.”<sup>19</sup> Granting Frontier’s request will help make broadband a reality for consumers in high-cost areas served by Frontier while furthering the Commission’s mission to ensure that all Americans are served by high-speed Internet access where they live, work, and travel.

### **CONCLUSION**

For all of the foregoing reasons, the Commission should expeditiously grant Frontier a waiver of Sections 54.318(i) and 54.313(a)(10) of the FCC’s rules, or in the alternative, provide Frontier with temporary relief from such requirements while it undertakes a proceeding to modify its rules to allow ILECs to demonstrate compliance with its rate floor and rate comparability requirements based on a weighted average of all local service rates.

Respectfully submitted,

By: /s/ Genevieve Morelli

Genevieve Morelli  
Micah M. Caldwell  
ITTA  
1101 Vermont Ave., NW, Suite 501  
Washington, D.C. 20005  
(202) 898-1520  
[gmorelli@itta.us](mailto:gmorelli@itta.us)  
[mcaldwell@itta.us](mailto:mcaldwell@itta.us)

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<sup>19</sup> Federal Communications Commission, *Connecting America: The National Broadband Plan*, at xi (rel. Mar. 16, 2010).