

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

In the Matters 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
)	

**REPLY COMMENTS OF
ITTA – THE VOICE OF AMERICA’S BROADBAND PROVIDERS**

ITTA – The Voice of America’s Broadband Providers (ITTA) hereby submits its reply to comments on the petition of CenturyLink, Inc. (CenturyLink) requesting a limited stay of the price cap carrier rate transition for tandem switching and transport services for years 6 and 7 contained in sections 51.907(g) and 51.907(h) of the Commission’s rules.¹ For the reasons

¹ CenturyLink Petition for Limited Stay of Transformation Order Years 6 and 7 ICC Transition – As it Impacts a Subset of Tandem Switching and Transport Charges, WC Docket No. 10-90 et al. (filed Apr. 11, 2017) (Petition). See *Wireline Competition Bureau Seeks Comment on CenturyLink Petition for Limited Stay of ICC Transition*, Public Notice, DA 17-388 (WCB Apr. 24, 2017); 47 CFR § 51.907(g), (h).

discussed below, ITTA agrees with the majority of commenters that the Commission should grant the Petition. The few comments filed in opposition to the Petition are meritless.

I. BACKGROUND

Pursuant to the *USF/ICC Transformation Order*, in which the Commission adopted comprehensive reform to the intercarrier compensation (ICC) mechanisms as well as the federal universal service program, the terminating rates for tandem switching and transport services, when provided by price cap carriers, move to \$0.0007 in Year 6 and then to zero in Year 7 of the ICC transition to a bill and keep mechanism.² In the accompanying *USF/ICC Transformation FNPRM*, the Commission raised further, more comprehensive questions regarding the future status of tandem services.³ Five-and-a-half years later, those issues remain unresolved.

The *USF/ICC Transformation FNPRM* provides that the Years 6 and 7 bill and keep transition applies: “(1) for transport and termination within the tandem serving area where the terminating carrier owns the tandem serving switch; and (2) for termination at the end office where the terminating carrier does not own the tandem serving switch.”⁴ However, Section 51.907(g)(2) and (h) of the Commission’s rules, ostensibly implementing these provisions, references traffic traversing a tandem switch that the terminating carrier “or its affiliate[s]”

² See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17934-35, para. 801 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *aff’d sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2072 (2015). The transition rates do not merely have an impact on ILECs. Under the Commission’s rules, CLECs operating in price cap ILEC study areas must establish rates that are “no higher than” the reciprocal compensation rates charged by the ILEC. 47 CFR §§ 51.911(c), 61.26 (CLEC benchmark rule).

³ See Petition at 5 and n.12 (citing, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd 17943, para. 820 (describing remaining unresolved issues and “seek[ing] comment on the appropriate treatment of, and transition for, all tandem switching and transport rates” in the *USF/ICC Transformation FNPRM*)).

⁴ *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18112, para. 1306 n.2358.

own(s).⁵ Nowhere in the *USF/ICC Transformation Order and/or FNPRM* or the Commission's rules does the Commission define what "affiliates" are referred to in this context.⁶

Against this backdrop, the Year 6 annual tariff filing process commences on June 16, 2017. According CenturyLink, it along with other carriers recently conferred with Commission staff in an effort to secure guidance on how to resolve the ambiguities stemming from the failure to define "affiliate" for purposes of Section 51.907.⁷ Instead of clarifying matters, however, as a result of the guidance, "there is now considerable potential for debate and disagreement regarding how the [guidance] for price cap ILECs and rate of return ILECs carr[ies] over (by virtue of the CLEC benchmark rule) to the variety of potential call flows where a CLEC might own the tandem."⁸ In turn, "there will be massive confusion in the annual tariff filing process for price cap ILECs and, perhaps even more so, for CLECs when they follow-up on July 16, 2017 with attempts to conform their filings. This will inevitably lead to a huge drain of industry and Commission resources as an estimated hundreds and hundreds of tariff filings must be reviewed for compliance . . . [T]here are likely to be a high number of billing disputes – leading to a

⁵ 47 CFR § 51.907(g)(2), (h).

⁶ See Petition at 5; see also Comments of Inteliquent, Inc., WC Docket No. 10-90, at 2 (May 4, 2017) (Inteliquent Comments) (The *USF/ICC Transformation Order* "offers no guidance as to what 'affiliates' are covered" by the rules).

⁷ See Petition at 6-7.

⁸ *Id.* at 7. See Comments of West Telecom Services, LLC and Peerless Network, Inc., WC Docket No. 10-90, at 3 (May 4, 2017) (Competitive Tandem Provider Comments) (Notwithstanding the definition of "affiliate" in Section 3 of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 153(2), "CenturyLink claims that Commission staff, in informal communications, advised . . . that the terminating tandem rate reductions required in Years 6 and 7 would apply only to calls where the tandem switch and the terminating switch are both owned by price cap ILECs that are subsidiaries of the same holding company. If this is correct, interpretation of the term 'affiliates' in Section 51.907 would be inconsistent with the Act's definition of affiliate.") (citing Petition at 6); Inteliquent Comments at 3 ("the staff appears to be interpreting the term 'affiliates' in this section of the rules in a unique manner").

further drain on industry and FCC resources alike.”⁹ CenturyLink also argues that the guidance will lead to fundamental asymmetry in ICC treatment that itself will lead to irreversible competitive harm.¹⁰ Therefore, CenturyLink asserts, “[a] stay by the Commission will, at least temporarily, stave off many of these problems and permit the Commission to more carefully consider the best ICC approach to appropriately deal with the entire suite of tandem services at this point in time.”¹¹

II. DISCUSSION

It is a fundamental precept that where confusion and regulatory uncertainty reign, investment and competition likely drop.¹² The words “confusion” and/or “ambiguities” appear in each of the comments in support of the Petition.¹³ As CenturyLink maintains, a key policy underpinning of the Commission’s adoption of the ICC transition was the Commission’s “desire

⁹ Petition at 9. *See* Competitive Tandem Provider Comments at 5 (concurring with CenturyLink); Inteliquent Comments at 4 (“chaos will be the inevitable result if different carriers adopt different interpretations of the rules, and particularly the meaning of ‘affiliates,’ in their 2017 access tariff filings”).

¹⁰ *See* Petition at 8; *see also* Inteliquent Comments at 5 (“there is a likely harm to competition if the rules are interpreted to require different prices (including, in some cases, a price of zero) for functionally identical or similar services”).

¹¹ Petition at 11.

¹² *See, e.g.*, Comments of HAMR Communications, Inc., WC Docket No. 10-90 et al., at 2 (May 4, 2017) (HAMR Comments) (“Lack of regulatory certain[ty] stifles competition.”); Remarks of FCC Chairman Ajit Pai at Carnegie Mellon University’s Software Engineering Institute: Bringing the Benefits of the Digital Age to All Americans 4 (Mar. 15, 2017) (“the government should aim to minimize regulatory uncertainty, which can deter long-term investment decisions”); David Kaut, *Broadband Investment Argument Seen Key to Pai FCC Plan on Title II Net Neutrality*, Comm. Daily (D.C.), May 10, 2017, at 5 (quoting Kathy Zachem, Executive Vice President, Comcast, at Federal Communications Bar Association panel, “FCC Deregulation Priorities in the Trump and Pai Era,” May 6, 2017, Farmington, PA) (“‘regulatory risk is a significant component’ of investment decisions . . . ‘It is discussed with respect to every major business initiative’”).

¹³ *See, e.g.*, Comments of Peninsula Fiber Network, LLC, WC Docket No. 10-90 et al., at 1 (May 4, 2017) (Peninsula Fiber Comments); Comments of Cincinnati Bell, WC Docket No. 10-90 et al., at 2 (May 3, 2017) (Cincinnati Bell Comments); Inteliquent Comments at 5; Competitive Tandem Provider Comments at 5; HAMR Comments at 1.

to eliminate the confusing market signals and other competitive harm and the variety of arbitrage schemes that result when there is disparity in rates for identical services.”¹⁴ And yet, confusion associated with the Years 6 and 7 transitions called for in Section 51.907 of the Commission’s rules threatens to foster the competitive harm and arbitrage that the ICC transition was designed to eliminate.

In fact, such confusion and its effects is not merely theoretical; empirically, disruptive uncertainty is already materializing as a result of it.¹⁵ As the Competitive Tandem Providers describe, such uncertainty “provides IXCs an opportunity to challenge the enforceability of specific switched access tariffs, aggressively dispute charges, and in many cases engage in self-help by refusing to pay any amount for the switched access charges under dispute.”¹⁶ Therefore, they conclude, “[i]mplementing these rules before resolving significant issues of applicability and interpretation would expose . . . carriers . . . to unreasonable risks of business disruption, litigation, and potential financial exposure.”¹⁷ These comments bolster CenturyLink’s contention that a stay is the appropriate interim remedy in order to “avoid these problems and merely preserve the status quo while the Commission more carefully considers unintended consequences.”¹⁸ For these reasons, as well as the aforementioned practical considerations of the burdens that will be imposed on carriers and Commission staff alike associated with confusion surrounding the impending tariff filing process, ITTA concurs that a suspension of any further

¹⁴ Petition at 8-9 (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17929-30, paras. 790-92).

¹⁵ See Competitive Tandem Provider Comments at 5.

¹⁶ *Id.*

¹⁷ *Id.* See also Inteliquent Comments at 5.

¹⁸ Petition at 8. See Peninsula Fiber Comments at 2; Cincinnati Bell Comments at 2-3 (requesting that the Commission postpone any required changes to carriers’ tandem switching rates while it evaluates potential unintended consequences associated with the planned reductions in such rates).

transition for tandem switching and transport services is warranted until the full impact can be adequately considered by the Commission.¹⁹

Each of the comments in opposition to the Petition, while conceding that further guidance is warranted,²⁰ nevertheless advocates that the Commission should “simply”²¹ issue clarifying guidance and resolve outstanding issues in this proceeding instead of granting a stay. For instance, Sprint suggests that to avoid confusion as to which access tandem – end office combinations involve affiliates, “each price cap carrier provide a list of its affiliated tandem/end office combinations to a neutral entity (*e.g.*, ATIS) and that a nationwide list or database containing this information be made publicly available.”²² Under Section 51.907(g), the Year 6 transition rate is scheduled to go into effect on July 1, 2017, barely over a month-and-a-half from now. Comprehensive questions in this proceeding regarding the future status of tandem services have gone unaddressed for five-and-a-half years.²³ The propositions that these issues can be resolved, and Sprint’s suggested remedy to avoid confusion regarding affiliates implemented, by July 1 are preposterous. Nor are the prospects of the Commission informally resolving “remaining interpretive issues in advance of the 2017 annual tariff filings”²⁴ availing. As

¹⁹ *See* Petition at 13.

²⁰ *See, e.g.*, Opposition of Sprint Corporation, WC Docket No. 10-90 et al., at 3-4 (May 4, 2017) (Sprint Comments); Opposition of NCTA – the Internet & Television Association to CenturyLink Stay Petition, WC Docket No. 10-90, at 1 (May 4, 2017) (NCTA Comments) (“Rather than granting a stay . . . the Commission should focus on resolving the tandem transport issues that are still pending in this rulemaking); Comments of AT&T in Opposition to CenturyLink Petition for Stay, WC Docket No. 10-90, at 2-3 (May 4, 2017).

²¹ NCTA Comments at 3.

²² Sprint Comments at 4.

²³ *See supra* p.2.

²⁴ NCTA Comments at 3.

depicted by CenturyLink, informal guidance, while well-intentioned, nevertheless has only further exacerbated the confusion.²⁵

Finally, in an analogous situation in 2013, the Commission applied similar relief to that requested by CenturyLink. At the time, due to incomplete data and widespread industry confusion surrounding implementation of quantile regression analysis (QRA) to establish high-cost loop support benchmarks, the Wireline Competition Bureau (Bureau) froze the benchmarking rule for 2014 and used the same regression coefficients as it had previously used for 2012 and 2013, in order to “provide carriers with more certainty” by enabling them to estimate their 2014 support.²⁶ The Bureau also took additional measures to provide “stability in support during this transition year” while it revised the regression methodology.²⁷ Ultimately, based on further experience with the benchmarking rule, the Commission concluded that it was “not functioning as originally intended,” and therefore eliminated the rule.²⁸ Following the Commission’s wise previous lead, likewise in order to alleviate confusion, provide increased regulatory certainty, and provide stability in support during a transition year while the

²⁵ See Petition at 6-7; see also Peninsula Fiber Comments at 2 (the guidance, while well-intentioned, has the “potential of shaping a market in unintended ways that hinder rather than foster competition”).

²⁶ *Connect America Fund; High-Cost Universal Service Support*, Order, 28 FCC Rcd 10999, 11003, para. 13 (WCB 2013).

²⁷ *Id.* at 11004, para. 13.

²⁸ *Connect America Fund et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7097, para. 131 (2014). See *id.* at 7251, Statement of Commissioner Ajit Pai Approving in Part and Dissenting in Part (“The QRA benchmarks introduced substantial uncertainty into the marketplace” and thereby “chilled the investment climate”); *id.* at 7248, Statement of Commissioner Mignon L. Clyburn (“I agree that the benchmark rule did not necessarily achieve its intended goal”); *id.* at 7261, Statement of Commissioner Michael O’Rielly Approving in Part and Concurring in Part (“It is also important that the Commission periodically review and replace rules that may have been well-intentioned but did not operate as envisioned. Therefore, I’m glad that the Order eliminates the QRA benchmarks,” which were a “distraction.”).

Commission evaluates a potentially flawed rule, here the Commission should freeze implementation of the Years 6 and 7 transition rates while it considers whether the transition for tandem switching and transport services is functioning as intended.

III. CONCLUSION

For the foregoing reasons, ITTA supports the Petition. The Commission should grant the Petition and stay the Years 6 and 7 transitions called for in Sections 51.907(g) and 51.907(h), or grant comparable relief through freezing the rates at their current levels, pending Commission issuance of further guidance, resolution of outstanding issues in this proceeding related to tandem switching and transport services, and review of whether the transition for tandem switching and transport services is functioning as intended.

Respectfully submitted,

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