

**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

**COMMENTS
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

January 18, 2012

TABLE OF CONTENTS

	Page
INTRODUCTION AND SUMMARY.....	1
DISCUSSION.....	2
I. ETC Service Obligations.....	2
II. Provider Eligibility Requirements in Price Cap Territories.....	7
A. Certification of Financial and Technical Capability.....	7
B. Eligibility of Carriers Declining a State-Level Commitment	8
C. Public Interest Obligations	9
III. Remote Areas Fund.....	10
CONCLUSION	15

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INTRODUCTION AND SUMMARY

On November 18, 2011, the Federal Communications Commission (FCC) issued a sweeping Report and Order (R&O) that comprehensively reforms the universal service fund (USF) intercarrier compensation systems to facilitate the transition from the tradi-

tional public switched telephone network to IP-based networks that are available to all. Additionally, the FCC released an accompanying Further Notice of Proposed Rulemaking (FNPRM) seeking comment on several matters related to this transition. The Public Utilities Commission of Ohio (Ohio Commission) will limit its comments to sections F, J and K that pertain to eligible telecommunications carrier (ETC) service obligations, provider eligibility requirements and the Remote Areas Fund, respectively. The Ohio Commission is pleased to present these comments for the FCC's consideration.

DISCUSSION

I. ETC Service Obligations

Through its R&O, the FCC has established the Connect America Fund (CAF), which will ultimately replace all existing high-cost support mechanisms.¹ In its accompanying FNPRM, the FCC seeks comment on whether to relax or eliminate the section 214(e)(1) voice service obligations of ETCs where the ETC receives reduced high-cost support or no longer receives federal high-cost support of any kind.²

The CAF has two phases. The first phase consists of incremental support and “frozen high-cost” support. Incremental support is a one-time disbursement of funds

¹ *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) at 11, ¶ 20 (R&O/FNPRM).

² *Id.* at 400, ¶ 1095.

“designed to provide an immediate boost to broadband deployment.”³ Frozen high-cost support is provided to price cap local exchange carriers and their rate-of-return affiliates. It is capped and based upon the “amount of [legacy high-cost] support each carrier received in 2011.”⁴ Pursuant to the FCC’s R&O, frozen high-cost support will be reduced each year to the extent that a carrier’s rates for local voice service fall below an urban local rate floor set by the FCC.⁵ During the second phase of the CAF, ongoing support will continue to be provided in price cap territories over a five-year period.⁶ The FCC will distribute this funding using a combination of competitive bidding and a new forward-looking model of the cost of constructing modern multi-purpose networks.⁷

The Ohio Commission believes that, where an ETC accepts either type of Phase I support, Section 214(e)(1) voice service obligations should not be relaxed or eliminated. The Ohio Commission further believes that, where an ETC accepts the one-time incremental support, it continues to be required to meet its Section 214(e)(1) voice service obligations⁸ for some period of time even if that carrier does not receive ongoing support.

³ R&O/FNPRM at 54, ¶137.

⁴ *Id.* at 52, ¶ 133.

⁵ *Id.*

⁶ *Id.* at 62, ¶ 156.

⁷ *Id.*

⁸ Section 214(e)(1)(A) states “[a] common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received— (A) offer the services that are supported by Federal universal service support mechanisms under section 254 (c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier).” 47 U.S.C. § 214(e)(1)(A).

Whether the ETC receives some incremental support or none at all, the Ohio Commission believes that the section 214(e)(1) service obligation to serve throughout its area should remain unaltered unless the ETC avails itself of one of the statutory processes discussed *infra*.

The FCC notes that in certain areas, ETCs will retain existing support levels or even receive greater funding under the CAF.⁹ However, this funding will be increasingly targeted at the census block level, or to other precisely defined geographic areas.¹⁰ The FCC asks whether some adjustment to an ETC's section 214(e)(1) obligation may be appropriate in such instances.¹¹ The FCC suggests that the existing section 214 ETC relinquishment and service area redefinition procedures,¹² backstopped by the availability of forbearance from federal requirements,¹³ provide an appropriate case-by-case framework in which to address situations such as this, as well as those discussed in the preceding paragraph.¹⁴ The Ohio Commission agrees with the FCC's assessment that the existing statutory ETC relinquishment and service area redefinition procedures provide an appropriate case-by-case framework in which to address these issues.¹⁵ Barring an amendment to section 214, the processes set forth in that section provide a sufficient

⁹ R&O/FNPRM at 400, ¶ 1095.

¹⁰ *Id.* at 401, ¶ 1096

¹¹ *Id.*

¹² 47 U.S.C. § 214(e)(4)(5) (2012).

¹³ 47 U.S.C. § 160 (2012).

¹⁴ R&O/FNPRM at 401 -402, ¶ 1097.

¹⁵ *Id.*

remedy to ETCs that wish to be relieved of their section 214 (e)(1) voice service obligations.

Should an ETC find the relinquishment and/or service area redefinition provisions of section 214 to be insufficient, the FCC indicates that forbearance, handled on a case-by-case basis, provides an appropriate remedy.¹⁶ Section 160(a) states that the FCC shall “forbear from applying any regulation or any provision of [the] Act to a telecommunications carrier . . . in any or some of its geographic markets,” in certain instances.¹⁷ The Ohio Commission concurs with the FCC’s assessment that the FCC’s forbearance from the section 214(e)(1) requirement that ETCs offer service “throughout [their] service area” may be proper, but only where the statutory criteria for forbearance are met.¹⁸ This, the Ohio Commission submits, is the required result under section 160(a) to forbear from the 214(e)(1) requirements.

Some commenters have suggested that an ETC’s section 214(e)(1) service area “should be limited to those specific geographies where the ETC is receiving universal service support.”¹⁹ These commenters further suggest that the FCC grant blanket section

¹⁶ R&O/FNPRM at 401-402, ¶ 1097.

¹⁷ The criteria for forbearance set forth in section 160(a) are as follows: (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. (b) Competitive effect to be weighed In making the determination under subsection (a)(3) of this section, the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. 47 U.S.C § 160(a) (2012).

¹⁸ R&O/FNPRM at 401-402, ¶ 1097.

¹⁹ *Id.* at 402, ¶ 1098.

160(a) forbearance “to the extent section 214(e)(1) requires ETCs to offer service in areas where they receive no universal service support.”²⁰ The FCC invites comment on these suggestions. The Ohio Commission finds little merit in these suggestions and believes that section 214 sets forth the appropriate remedies should an ETC wish to be relieved of its section 214(e)(1) service obligations in all or any portion of its service territory. This more reasoned position properly recognizes the important balance between the FCC and the states, consistent with the role left to state commissions under section 214(e)(5). The Ohio Commission submits that this position is consistent with intent of Congress when it enacted section 214.

The FCC seeks comment on how to ensure that low-income consumers who only wish to subscribe to voice service continue to have the ability to receive Lifeline benefits.²¹ The ETC designation does not make carriers eligible to receive universal service support in high cost areas only; rather, it comes with the obligation to provide discounted service to low-income consumers without regard to where the consumer lives. ETCs providing Lifeline service to low-income consumers in urbanized areas are reimbursed through the Lifeline component of the USF and will continue to receive such support. ETCs that provide Lifeline service to consumers in high-cost areas remain eligible to receive reimbursement from the Lifeline component of the USF even if they do not continue to receive funding from the high-cost component of the USF following the implementation of the CAF. The FCC notes that a safeguard is in place to protect consumers

²⁰ R&O/FNPRM at 402, ¶ 1099.

²¹ *Id.* at 403, ¶ 1102.

as an ETC may seek relief from some or all of the FCC's USF reforms where the carrier can demonstrate that reductions in existing high-cost support will place customers at risk of losing service where no alternative terrestrial providers exist.²² The Ohio Commission believes that this CAF waiver mechanism is an effective means to ensure that Lifeline providers remain able to provide voice-only Lifeline service to Lifeline customers.

II. Provider Eligibility Requirements in Price Cap Territories

A. Certification of Financial and Technical Capability

The FCC proposes that each ETC seeking to receive support through a competitive bidding process certify that it is financially and technically capable of providing service within a specified timeframe.²³ The Ohio Commission supports this proposal. In Ohio, a similar showing has long been required of entities wishing to be certified as telecommunications carriers in the state. The Ohio Commission believes that such a requirement provides a level of certainty that carriers will actually be able to provide the services that they intend to offer and that consumers ultimately rely upon.²⁴ Certainly, if such a showing is appropriate in situations in which USF dollars are not a factor, it is all the more appropriate in those situations, such as the competitive bidding process, in which they are. State commissions are best positioned to ascertain financial and technical capability,

²² R&O/FNPRM at 14, ¶ 32

²³ *Id.* at 424, ¶¶ 1198, 1200.

²⁴ *See*, The Public Utilities Commission of Ohio Telecommunications Supplemental Application Form for Carrier Certification, Attachment 1 available at <http://www.puco.ohio.gov/emplibrary/files/util/TelecomFiles/Telecom%20Application%20Forms/Supplemental%20ACE%20Application%201-19-11.pdf>.

pursuant to criteria established by the FCC, either as part of the ETC designation process or through an independent process for existing ETCs that have not previously made such a showing.

B. Eligibility of Carriers Declining a State-Level Commitment

The Ohio Commission agrees with the FCC’s inclination to allow incumbent carriers that decline the state-level commitment to participate in the competitive bidding process.²⁵ This approach recognizes that there may be instances in which the model-determined support may not be sufficient to enable the incumbent carrier to meet the state-level commitment. In such instances, incumbent carriers declining the state-level commitment, *i.e.*, model-determined support, should have an opportunity to take part on an equal basis with other service providers in the competitive bidding process to receive sufficient support. In allowing such carriers to do so, the incumbent carriers’ no-win proposition of having to choose between receiving insufficient support or receiving no support at all is eliminated.

While this “second bite at the apple” may serve as a disincentive for incumbent carriers to accept the state-level commitment in some instances, no carrier is guaranteed any support through the competitive bidding process in any event. As such, the Ohio Commission believes that an incumbent carrier will be unlikely to gamble in a truly competitive bidding process if the model-determined support is sufficient. Nonetheless, the Ohio Commission recognizes that this may not always be the case and encourages the

²⁵

R&O/FNPRM at 424-425, ¶ 1201.

FCC to take affirmative steps to assure a truly competitive bidding process that does not allow incumbent carriers to take advantage of the process.²⁶ The Ohio Commission believes that such instances “affect[] the fair and efficient conduct of the bidding” in a competitive bidding process and, accordingly, fall under the FCC’s discretion to “delay, suspend or cancel bidding before or after a reverse auction begins.”²⁷ Nonetheless, the Ohio Commission believes that the FCC’s proposed approach injects the economies of scale and scope of the incumbent carrier into the competitive bidding process, which will help ensure that the bidding process achieves the most efficient level of support. By taking this approach, the FCC will better be able to constrain the growth of the USF and remain within its newly adopted high-cost budget.

C. Public Interest Obligations

The FCC’s proposal to impose the same performance requirements upon carriers that receive support either through the competitive bidding process or model-determined support is endorsed by the Ohio Commission.²⁸ This prevents incumbent carriers from gaming the system when they are in positions that they are the most likely to be awarded support through competitive bidding. Without this parity, incumbent carriers may choose to decline the model-determined support if the field of competitive bidders is weak,

²⁶ The Ohio Commission acknowledges the FCC’s recognition that there may be instances that warrant the delay, suspension or cancellation of a reverse auction and its delegation of authority to its Bureaus take such action under rules adopted for Mobility Fund Phase I. The Ohio Commission recommends that the FCC adopt a similar rule by which it may take similar action either on its own initiative or through its Bureaus for price cap CAF auctions. *See* R&O/FNPRM at 428, ¶ 1216.

²⁷ *Id.* at 144, ¶ 432; 428, ¶ 1216. *See*, 47 C.F.R. § 1.2104 (2012).

²⁸ *Id.* at 425, ¶ 1203.

choosing instead to participate in the competitive process. Should the incumbent carrier win the auction, it would receive support that is greater than the model-determined support, yet be obligated to less stringent performance requirements than it would have been had it accepted the state-level commitment. As discussed *supra*, support is not guaranteed to any carrier through the competitive bidding process and, the Ohio Commission believes, if the model-determined support is sufficient, incumbent carriers will not likely gamble on the competitive bidding process. Nonetheless, it is foreseeable that situations may arise in which an incumbent has such a distinct advantage over other potential bidders that it would forego the model-determined support for the competitive bidding process. The Ohio Commission's recommendations regarding non-competitive bidding notwithstanding, the incumbent should not, in such cases, reap the benefits of both greater support and lessened performance requirements.

III. Remote Areas Fund

The FCC has dedicated an annual budget of at least \$100 million to ensure that the less than one percent of Americans who live in remote, extremely high-cost areas are able to obtain affordable broadband.²⁹ In discussing its implementation of this “Remote Area Fund” (RAF), the FCC has proposed using CAF support to make discounted voice and broadband services available to qualifying residences/households in these remote areas.³⁰ The FCC notes that this support would be provided in a manner similar to the

²⁹ R&O/NPRM at 429, ¶ 1223.

³⁰ R&O/FNPRM at 436-437, ¶ 1255.

support provided under its Lifeline program and, as such, has proposed limiting support for remote areas to one subsidy per residence/household.³¹ As part of its proposal, the FCC invites comment on whether there should be a means test that residences/households must meet to receive support.³²

From the Ohio Commission's perspective, CAF support that is to be provided in remote areas through the RAF would, in fact, be very similar to support currently provided under the Lifeline program and should be subject to restrictions and requirements similar to those applied to the Lifeline program. Accordingly, the Ohio Commission supports the FCC's proposal to limit CAF support to one subsidy per residence/household in remote areas.³³ As with Lifeline support, the adoption of this limitation will ensure that support is sufficient, but not excessive.³⁴ The Ohio Commission agrees that a single, fixed broadband connection per single residence/household,³⁵ is sufficient given the availability and relative low cost of wireless routers that make broadband available simultaneously to multiple devices through a single broadband connection. That being the case, it makes little sense to provide multiple, subsidized connections to a single residence/household in any extremely high-cost remote area.

³¹ R&O/FNPRM at 436-437, ¶ 1255.

³² *Id.* at 436-437, ¶¶ 1255, 1261.

³³ *Id.* at 437, ¶ 1256.

³⁴ *See In the Matter of Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up*, WC Docket No. 11-42, CC Docket No.95-45, WC Docket No. 03-109 (Comments Submitted on Behalf the Staff of the Public Utilities Commission of Ohio at 10) (filed April 21, 2011).

³⁵ R&O/FNPRM at 437, ¶ 1256.

In proposing to limit support to one subsidy per residence/household, the FCC seeks comment on adopting the definition of residence or household that it adopted for the Lifeline program in its Lifeline and Link Up Reform and Modernization Notice of Proposed Rulemaking (Lifeline NPRM).³⁶ The Ohio Commission supports the FCC's adoption of this definition. According to the Lifeline NPRM, a residence/household is defined as a "billing residential address." A billing residence address is further defined as "a unique residential address recognized by the U.S. Postal Service address."³⁷ The Ohio Commission believes that by adopting this definition, the FCC will reduce the likelihood that multiple subsidies are provided at a single address. The Ohio Commission encourages the FCC to place the burden upon the service provider to cross-check a potential subscriber's address when qualifying a request for new service in a remote area. The provider would then assume the responsibility for ensuring that a subsidy is not presently being provided at the residential address. If it is later discovered that multiple subsidies have been provided to a single residential address, the service provider should not be eligible to be reimbursed for the duplicative discount provided to the subscriber at that address. The Ohio Commission believes that this should not be a common occurrence because, unlike Lifeline service with multiple service providers, only one supported broadband provider in a remote area will be responsible for providing service to all subsidized subscribers in that area.

³⁶

R&O/FNPRM at 437, ¶ 1257.

³⁷

In the Matter of Federal State Joint Board of Lifeline and Link Up Reform and Modernization, Notice, WC Docket No. 11-42, 26 FCC Rcd 2770, 2872-3, Appendix A (proposed 47 C.F.R. § 54.408)

The FCC points out that it is likely that there are presently subscribers in high-cost, remote areas who are capable of and willing to pay for satellite voice and broadband services at current prices. As such, the FCC has proposed limiting RAF support to new subscribers only.³⁸ The Ohio Commission believes that such a limitation may constitute an overly judicious use of the RAF and prove very difficult to enforce. Rather than try to determine who or what a new subscriber is, the Ohio Commission encourages the FCC to focus on providing the RAF subsidy to those who need it by making eligibility for RAF support contingent upon a means-based test. This will direct support to those who truly need it and predominantly focus upon new subscribers who previously could not, prior to the subsidy, afford such service.

With the RAF potentially taking on the characteristics of a subscriber means-based subsidy rather than direct high-cost provider support, the FCC seeks comment on the relationship between CAF support through the RAF and the Lifeline program.³⁹ As indicated above, the Ohio Commission believes that CAF support for remote areas and Lifeline support are very similar in nature. As such, CAF support through the RAF should be treated in the same or largely similar manner to the Lifeline program with regard to support eligibility. While the Ohio Commission recognizes the possibility that a subscriber may qualify for service discounts under both the RAF and the Lifeline program, it does not find this inappropriate so long as Lifeline subscribers in remote areas are not put in a better position than their counterparts in areas that are not extremely high-cost. While

³⁸ R&O/FNPRM at 437, ¶ 1260.

³⁹ *Id.* at 437, ¶ 1258.

service rates will vary from state to state, and even service area to service area, Lifeline customers in extremely high-cost remote areas should not receive what would essentially be a windfall simply by virtue of living in an extremely high-cost remote area. Ultimately, the combined subsidy should not, on average, result in lower monthly service rates for Lifeline subscribers in extremely high-cost remote areas than it does for Lifeline subscribers outside of these areas. Furthermore, the Ohio Commission believes that if FCC adopts a means-based requirement for the receipt of RAF support, subscribers should be subject to the same or significantly similar income eligibility guidelines and verification requirements as Lifeline customers. This will help ensure that support is available only for those for whom it is intended, while guarding against unnecessary growth of the RAF. To this end, the Ohio Commission suggests that recipients of means-based RAF support could be included in any national database established by the FCC for Lifeline purposes.

CONCLUSION

The FCC's R&O has ushered in numerous and comprehensive reforms to the high-cost USF and Ohio, like all states, will be impacted as a result. The FCC's reforms have also created many unresolved questions and issues as recognized in the FNPRM. The Ohio Commission believes that the approach the FCC takes in resolving these matters will weigh heavily determining the ultimate success of the FCC's high-cost reform efforts. Accordingly, the Ohio Commission appreciates this opportunity to provide its thoughts and recommendations to the FCC for its studied consideration.

Respectfully submitted,

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96-45	FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE
03-109	In the Matter of Lifeline and Link-Up
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