

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	

**COMMENTS OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (Pa. PUC) files these Comments in the above-captioned proceeding in accordance with the Public Notice (*Notice*) published in the Federal Register on June 8, 2017,¹ in which the Federal Communications Commission (Commission or FCC) seeks comment regarding the Notice of Proposed Rulemaking² (*Local Rate Floor NPRM*) and whether it should change the current rate floor methodology or eliminate the rate floor and its accompanying reporting obligation. In the *Notice*, the Commission specified that comments are due July 10, 2017, and reply comments are due July 24, 2017.

Introduction and Summary

As an initial matter, these Comments should not be construed as binding on the Pa. PUC in any matter currently pending before the Pa. PUC. Also, these Comments could change in response to later events, including ex parte filings or the review of other filed comments or replies and legal or regulatory developments at the state or federal level.

In its *Local Rate Floor NPRM*, the Commission seeks comment whether to modify its current methodology regarding the local “rate floor,” which is the national average of local rates plus state regulated fees, or to eliminate the rate floor and its accompanying reporting obligations.

¹ 82 Fed. Reg. 26653.

² *In the Matter of Connect America Fund*, WC Docket No. 10-90, Notice of Proposed Rulemaking, FCC 17-61 (rel. May 19, 2017) (*Local Rate Floor NPRM*).

The Pa. PUC supports the Commission's efforts to ensure it adopts policies that preserve and advance the concept of universal service and ensure that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."³ However, the Pa. PUC reiterates its position that any intrastate rate setting mechanisms are within the jurisdictional authority of the states.

The Pa. PUC opposes any proposals that would further or prolong federal mandates that undermine Pennsylvania independent state law, specifically, ratemaking authority to establish local rates for its jurisdictional local telecommunications services providers. Commission efforts should be limited to setting rates for interstate telecommunications, not rates for intrastate local telecommunications services, which is the purview of the respective state public utility commission. The Commission should not continue to extend its primary jurisdiction to all intrastate communications on the theory that it has ancillary effect on matters within its primary jurisdiction. *See Iowa Utilities Bd. v. FCC*, 525 U.S. 366, 381 (1999). Accordingly, we urge the Commission to eliminate the rate floor requirement and consider more measured and practical ways of ensuring that local service rates are brought into fair balance where need to do so exists while nationally preserving and advancing the redefined goals of universal service involving consumer access to both voice and broadband services.

³ 47 U.S.C. § 254(b)(3).

Background

In 2011, the Commission adopted the *USF/ICC Transformation Order* with a goal of comprehensively reforming and modernizing the high cost support program to maintain voice services and to extend high cost support to the provision of broadband-capable infrastructure and access services.⁴ In the *USF/ICC Transformation Order*, the Commission adopted a rate floor “to ensure that states are contributing to support and advance universal service and that consumers are not contributing to the Fund to support customers whose rates are below a reasonable level.”⁵ To be consistent with Section 254(b) of the Communications Act, as amended, the Commission also determined that “ETCs must offer voice telephony service, including voice telephone service offered on a standalone basis, at rates that are reasonably comparable to urban rates,”⁶ and it adopted a presumption that “a voice rate is within a reasonable range if it falls within two standard deviations above the national average.”⁷

Specifically, the Commission adopted a rule intended to ensure that consumers across the country are not subsidizing the cost of voice service to rural customers whose rates are below an identified minimum rate.⁸ This requirement is known as the “rate floor.” The Commission determined that it would limit high-cost support where local end-user rates plus state regulated fees (specifically, state subscriber line charges (SLCs), state universal service charges, and mandatory extended area service charges) do not meet an urban rate floor representing the national average of local rates plus such state regulated fees.⁹

⁴ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *aff’d sub nom In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *cert. denied* 83 U.S.L.W. 3835, May 4, 2015 (*NARUC v. FCC*, S. Ct., No. 14-901, *Allband Com. Coop. v. FCC*, S. Ct., No. 14-900).

⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17751, para. 238 (footnote omitted).

⁶ *Id.* at 17693, para. 81.

⁷ *Id.* at 17694, para. 84.

⁸ *Id.* at 17749-56, paras. 234-47.

⁹ See *id.* at 17751, para. 238.

As part of the implementation of the rate floor mechanism, the Commission adopted a phased-in approach during which carriers would be allowed to implement the local rate increases to the point at which carriers would lose universal service support. If a carrier chose to charge its customers less than the rate floor amount for voice service, the difference between the amount charged and the rate floor would be deducted from the amount of support that carrier would receive through the federal Universal Service Fund (USF) mechanism. Since July 1, 2016, this minimum amount has been set at \$18, and the next scheduled increases are to levels of \$20 on July 1, 2017, and \$22 on July 1, 2018.

The Commission is now seeking comment whether it should make any changes to the current methodology or eliminate the rate floor and its accompanying reporting obligations.¹⁰ In addition, pending review of the record that develops, the Commission has chosen to freeze the rate floor at its existing \$18 level for two years unless or until it takes further action in this proceeding.

Discussion

At the outset, the Pa. PUC supports the Commission's efforts to ensure it adopts policies directed at the preservation and advancement of universal service principles so that all consumers across the nation could have access to comparable telecommunications and information services at comparable rates as intended by TCA-96.¹¹

In adopting the rate floor, the Commission determined that it is "inappropriate to provide federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability."¹² The Commission further stated that "[d]oing so places an undue burden on the Fund and consumers that pay into it" and expressed the view that it would not be equitable "for

¹⁰ See generally *Local Rate Floor NPRM*.

¹¹ 47 U.S.C. § 254.

¹² *USF/ICC Transformation Order*, 26 FCC Rcd at 17751, para. 237.

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.”¹³

However, the Commission is revisiting its local rate floor rule. In particular, the Commission questions whether the rule makes basic voice service in rural areas available at rates reasonably comparable to urban areas. The Commission also notes that the rule does not account for the fact that states—and not the Commission—have historically regulated rates for local telephone service, and that eliminating the rate floor would properly return to states the ability to ensure that local rates address local circumstances.

The Pa. PUC submits that the Commission does not have the authority to regulate the intrastate local service rates of telecommunications carriers in the Commonwealth of Pennsylvania and set a floor. Rather, the regulation of such service falls within the exclusive jurisdiction of the Pa. PUC. While the Pa. PUC appreciates the conclusion that rate floors are sustainable conditions of receiving federal universal service, the Pa. PUC submits that the rate setting authority for intrastate telecommunications is exclusively within the jurisdictional authority of the states, and the adoption of the rate floor is a *de facto* preemption of state authority. Accordingly, the Pa. PUC requests the Commission to eliminate the federally-mandated local rate floor.

The Communications Act of 1934 (1934 Act), 47 U.S.C. §§ 151, *et seq.*, established a system of regulatory authority that divided power between individual states and the Commission over inter- and intrastate telecommunications services.¹⁴ Under this statutory scheme, the

¹³ *Id.*

¹⁴ *New England Pub. Commc'ns Council, Inc. v. FCC*, 334 F.3d 69, 75 (D.C. Cir. 2003) (*New England Pub. Commc'ns Council*).

Commission regulates interstate telecommunications.¹⁵ The 1934 Act expressly states that the FCC has *exclusive* jurisdiction over interstate telecommunications service. *See* 47 U.S.C. § 152(a).

The Commission, however, “is generally forbidden from entering the field of intrastate communication service, which remains the province of the states.”¹⁶ Section 152(b) of the 1934 Act provides, in pertinent part, that “nothing in this chapter shall be construed to apply or to give the FCC jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire[.]”¹⁷ Section 152(b) of the Act erects a presumption against the Commission’s assertion of regulatory authority over intrastate communications. This is “not only a substantive jurisdictional limitation on the Commission’s power, but also a rule of statutory construction” in interpreting the Act’s provisions.¹⁸ Thus, the states primarily “reign supreme over intrastate rates.”¹⁹ Where Congress has remained silent, Section 152(b) continues to function.

The Pa. PUC acknowledges that, with the enactment of the Telecommunications Act of 1996 (TA-96), Congress created parallel jurisdiction for the FCC and the states, but only over *certain* interstate and intrastate matters. TA-96 did not fundamentally alter the telecommunications regulatory landscape in such a way that *all* telecommunications services are subject to parallel or concurrent jurisdiction. Rather, TA-96 gives the Commission parallel jurisdiction

¹⁵ *See USF/ICC Transformation Order*; 47 U.S.C. § 151. This regulatory authority includes ensuring that all charges “in connection with” interstate calls are “just and reasonable” and the Commission “may prescribe such rules and regulations as may be necessary in the public interest to carry out” these provisions. *See* 47 U.S.C. § 201(b).

¹⁶ *New England Pub. Commc’ns Council*, 334 F.3d at 75 (citing 47 U.S.C. § 152(b)).

¹⁷ 47 U.S.C. § 152(b).

¹⁸ *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 373 (1986).

¹⁹ *New England Pub. Commc’ns Council*, 334 F.3d at 75 (quoting *City of Brookings Mun. Tel. Co. v. FCC*, 822 F.2d 1153, 1155 (D.C. Cir. 1987)).

only over matters that fall within Sections 251 and 252 of TA-96.²⁰ The regulation of intrastate local rates, however, is not one of those matters. Thus, the traditional jurisdiction divide still exists regarding the regulation of intrastate local rates.

Moreover, Section 254, including the service comparability requirement, does not provide the Commission jurisdiction over intrastate local service rates. Section 254 does not override the command of Section 152(b) of the 1934 Act, which forbids the Commission from asserting jurisdiction over “charges, classifications, practices, services, facilities, or regulations for or in connection with *intrastate* communication service.”²¹ The Commission could not, for example, regulate any aspect of intrastate communications *not* governed by the 1996 Act on the theory that it had an ancillary effect on matters within the Commission’s primary jurisdiction.”²² Consequently, no matter how laudable the principle of ensuring comparability between the local rates of urban and rural consumers, Section 254 does not give the Commission ratemaking authority over *intrastate local rates* comparable to the authority that it has under Section 201 to regulate and set *interstate* rates.

The Pa. PUC states that the Commission has overstepped its authority by trying to set limits on intrastate local exchange service rates under the auspices that it is providing a federal benefit to rural LECs pursuant to Section 254 of the Act even if sustained as a claimed condition of receiving federal universal service support. Section 254 does not give the Commission ratemaking authority to regulate and set *intrastate local service* rates, and such authority should not be presumed. If preemption is the intended effect, the FCC’s analysis should address that issue directly. Moreover, the Pa. PUC has concerns about the use of a single, national rate floor

²⁰ See generally 47 U.S.C. §§ 251 and 252.

²¹ 47 U.S.C. § 152(b) (emphasis added).

²² See *Iowa Utilities Bd.*, 525 U.S. at 382 n.8.

because it is a flawed concept that results in rural LECs unnecessarily increasing the local rates of their rural consumers.

The Commission does not have the authority to regulate the intrastate local rates of carriers in the Commonwealth of Pennsylvania and set a floor: such services fall within the exclusive jurisdiction of the Pa. PUC. State commissions should be the only regulatory forum that directs LECs to raise local intrastate rates as allowed under existing regulatory mechanisms.²³ In particular, for Pennsylvania, rural LECs would, of course, still be required to file and seek Pa. PUC approval for any local rate changes under the terms of their respective Chapter 30 alternative or streamlined regulation and network modernization plans, which include the just and reasonable rate standard of applicable state law.

Additionally, the Pa. PUC also has policy concerns about requiring its rural local exchange carriers to charge their customers a minimum local voice rate in order to receive federal USF mechanism support. The rate floor requires that telecommunications companies charge a certain amount of money for monthly phone service in order to obtain High-Cost Loop Support (HCLS) and high-cost model support from the federal USF. This support is reduced in instances where end-user rates for local exchange voice service plus state regulated fees fall below the floor. The floor is intended to ensure that urban and rural rates are “reasonably comparable” and that urban consumers are not supporting overly low rural local rates.

However, we note that in some instances, the rate floor mandatory minimum has resulted in rural residents paying more for their basic telephone service than residents of urban areas. Hence, we share the concerns of others that the rate floor can have negative consequences on

²³ While some states have enacted deregulation legislation and relinquished jurisdiction over certain telecommunications services, the Pa. PUC retains jurisdiction over the basic service rates of telecommunication companies, which includes business and residential service lines, until minimum competitive threshold standards can be demonstrated.

rural consumers and businesses or on net contributors to the federal USF mechanism and may result in consumers to consider dropping voice service because of the rate hikes. The Pa. PUC notes that the number of consumers who can contact each other from federally supported access lines in rural areas that are subject to these rate floors is typically far less than the number of consumers in an urban area who can call each other on access lines. The Pa. PUC is concerned that the current reliance on urban rates to determine a rural local rate floor does not reflect the vast difference in the number of consumers reached by access lines both areas even though they are expected to have comparable rates. The resulting differential in the number of consumers reached over supported rural access lines compared to urban access lines may not constitute comparable rates for comparable services as required by Section 254.

The rural LECs should have the opportunity to re-price local rates based upon their respective business decisions and applicable state law, not based upon national proxies and federal mandates. Under the existing rule, a rural LEC's ability to receive HCLS support will be jeopardized if its rates for basic local exchange services are not at or above the \$18.00 per month rate floor mandated in the FCC's *USF/ICC Transformation Order*. The Pa. PUC is aware of at least one instance where a Pennsylvania rural LEC filed to increase local rates in order to stay above the rate floor. If not for the FCC's rate floor minimum mandatory requirement, the company may not have made the business decision to seek an increase resulting in higher rates for its rural customers. However, in order to avoid the loss of HCLS, the carrier was required to seek a local rate increase. In fact, the loss of HCLS could necessitate even larger rate increases in the future to potentially offset loss of federal funding. This is doubly detrimental to states such as Pennsylvania who are net contributors to the federal USF mechanism.

Accordingly, the Pa. PUC recommends the elimination of the rate floor requirement and associated reporting obligations. The Pa. PUC appreciates the opportunity provided by the Commission for the submission of these Comments.

Respectfully Submitted On Behalf Of
The Pennsylvania Public Utility Commission

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