

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Developing a Unified Intercarrier)	CC Docket No. 01-92
Compensation Regime)	
)	

**REPLY COMMENT OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (Pa. PUC) hereby submits this reply comment in response to the Federal Communication Commission’s (FCC or Commission) *Public Notice*¹ released September 8, 2017, in the above-captioned proceeding, inviting parties to update the record on issues raised by the Commission in the *2011 ICC Transformation FNPRM* regarding the network edge for traffic that interconnects with the PSTN, tandem switching and transport, and transit (the non-access traffic functional equivalent of tandem switching and transport).² The *Public Notice* was published in the Federal Register on September 26, 2017, setting October 26, 2017, for the filing of comments and November 13, 2017, for reply comments.³

¹ *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit*, Public Notice, 32 FCC Rcd 6856 (WCB 2017) (*Public Notice*).

² *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18111-13 and 18117, paras. 1297, 1306-13, and 1320-21 (2011) (“*USF/ICC Transformation Order*” or “*2011 ICC Transformation FNPRM*”), *aff’d sub nom. In re: FCC 11-161*, 753 1015 (10th Cir. 2014), cert denied, 135 S. Ct. 2072 (2015).

³ 82 Fed. Reg. 44754.

The Pa. PUC appreciates the opportunity to file this reply comment. As an initial matter, the Pa. PUC's reply comment should not be construed as binding on the Pa. PUC in any proceeding before the Pa. PUC. The proposals contained in this reply comment may change in response to subsequent events. This includes developments at the federal or state level, including the filing of ex parte pleadings.

Discussion

In the *USF/ICC Transformation Order*, the Commission adopted a uniform national bill-and-keep framework, under which carriers look first to their end-user subscribers to cover the costs of their respective networks.⁴ The *Public Notice* seeks to refresh the record on issues related to the network edge, tandem switching and transport charges, and transit charges in light of regulatory and market developments since comments were received on the FNPRM portion of the *USF/ICC Transformation Order*.⁵ The *Public Notice* also asks what other developments in the marketplace should guide the extent of its transition to bill-and-keep, and invites comment on any other issues that should be considered in the context of further Intercarrier Compensation (ICC) reform.⁶

1. The Commission Should Refrain from Transitioning Rates Associated with Originating Access and All Other Transport Charges to Bill-and-Keep at This Time.

In their comments, Verizon, AT&T, CenturyLink, and Sprint request that the Commission adopt a schedule for rapidly transitioning all originating access rates and all other

⁴ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17676-77, paras. 34-35, and 17904, para. 737.

⁵ See generally *Public Notice*, 32 FCC Rcd 6856.

⁶ *Id.*

transport rates to a bill-and-keep arrangement. As previously noted, the Commission's ICC reform adopted in the *USF/ICC Transformation Order* only addressed *terminating* end office charges and some *terminating* transport charges.⁷ While the Commission had determined that bill-and-keep is the "end state for all intercarrier compensation traffic," including originating access charges and the remaining terminating transport charges, it further determined that it would only implement a gradual transition for terminating access.⁸ The Commission reasoned that initially focusing the transition to bill-and-keep on terminating access rates would allow for a more manageable process and would focus reform where some of the most pressing problems, such as access charge arbitrage, had arisen.

The Commission in the *USF/ICC Transformation Order* did not adopt a transition plan for other rate elements, including originating switched access, dedicated transport, tandem switching and tandem transport in some circumstances, and other charges including dedicated transport signaling, and signaling for tandem switching. Furthermore, the Commission stated that limiting reform to terminating access charges at the time minimized the burden intercarrier compensation reform placed on consumers and helped manage the size of the access replacement mechanism adopted in the *USF/ICC Transformation Order*.

The Commission should refrain from transitioning the remaining access elements—originating access rates and those transport rates the initial transition did not cover—to bill-and-keep at this time. We note that the Commission has not yet fully implemented the initial rate transition for terminating access charges that it adopted in 2011. It is only now asking parties to refresh the record on several issues the *USF/ICC Transformation Order* related to the transition

⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17943, para. 819.

⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17905, para. 739.

of terminating rates to bill-and-keep. The Pa. PUC asserts that it is premature for the Commission to entertain any requests to evaluate the timing, transition, and possible need for a recovery mechanism for originating access or any other transport rate elements that were not addressed, reduced or immediately transitioned in the *USF/ICC Transformation Order*. The Pa. PUC agrees in part with the joint comments of NTCA—The Rural Broadband Association (NTCA) and WTA—Advocates for Rural Broadband (WTA) that the Commission should refrain from proposing any further ICC reforms until it carefully evaluates the impact of its prior ICC reforms and collects and analyzes data on current ILEC minutes, rates and revenues.⁹

Likewise, if the Commission decides to implement further ICC reforms to rates the initial transition did not cover, the Pa. PUC recommends that there should be a different process and transition period for originating tandem switching and transport services. This notice to refresh the record is not the proper vehicle to consider and then adopt any comprehensive proposals on transitioning the remaining rate elements consistent with the adopted bill-and-keep framework or for adopting a new recovery mechanism to provide for a gradual transition to bill-and-keep. The Commission should not yet entertain any requests to fully address the issue of originating access charges; until the current reforms underway are completed as suggested by the NTCA. Rather, the Commission should retain the status quo for originating access rates, which is to keep the rate cap at current levels as of the effective date of the rules adopted pursuant to the *USF/ICC Transformation Order*.

2. The Network Edge

In the *2011 ICC Transformation FNPRM*, the Commission recognized that a “critical aspect” of the bill-and-keep scheme is defining the network edge and sought comment on the

⁹ NTCA and WTA Comments at 12-19.

appropriate network edge and related issues. Specifically, it sought comment on defining the network edge as (1) a “competitively neutral” location “where interconnecting carriers have competitive alternatives—other than services or facilities provided by the terminating carrier to transport traffic to the terminating carrier’s network”;¹⁰ (2) a point in each Local Access and Transport Area (LATA) determined by a terminating carrier for Mutually Efficient Traffic Exchange;¹¹ or (3) a terminating carrier’s central office,¹² among other possibilities.¹³ It also sought comment on its determination that the states should establish the network edge pursuant to Commission guidance.¹⁴

The Commission seeks to refresh the record on this issue in light of regulatory and market developments. In particular, the Commission is interested in the experiences of states that have addressed network edge issues. Additionally, the Commission seeks comment on how any action it would take would affect such decisions or proceedings.

The Pa. PUC has determined that one point-of-interconnection (POI) per LATA as a mutually agreeable exchange point with other providers is sufficient for purposes of identifying the rights and financial obligations of carriers when transporting and exchanging traffic with

¹⁰ 2011 ICC Transformation FNPRM, 26 FCC Rcd at *Id.* at 18117-18, para. 1321 & n.2388 (quoting *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 an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, GN Docket No. 09-51, WC Docket Nos. 07-135, 05-337, 03-109; CC Docket Nos. 01-92 and 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554,4775-76, para. 682 (2011) (*USF/ICC Transformation NPRM*)).

¹¹ *Id.* at 18117-18, para. 1321 & n. 2389.

¹² *Id.* at 18117, para. 1320, n.2386.

¹³ *Id.* at 18117, para. 1320 (noting “the edge could be ‘the location of the called party’s end office, mobile switching center (MSC), point of presence, media gateway, or trunking media gateway’” (quoting *USF/ICC Transformation NPRM*, 26 FCC Rcd 4554, 4774, para. 680)).

¹⁴ *Id.* at 18117-18, para. 1321.

each other.¹⁵ The Pa. PUC believes that its “network edge” decision of one POI per LATA is reasonable, equitable, and legally permissible under independent state law.¹⁶ Moreover, the Pa. PUC’s determination is consistent with FCC precedent on the matter.¹⁷ Accordingly, the Commission should not act in any manner that will either reverse or be inconsistent with its own precedent or preempt and override the states’ authority to determine the “network edge” for carriers within their borders.

However, to remove any possibility for arbitrage if a terminating carrier chooses an indirect POI with the originating carrier’s network, i.e., via a third-party tandem switch, the Commission should adopt a rule that the terminating carrier is financially responsible for the costs of transit service. In other words, the sending carrier only bears the financial obligation to deliver traffic to the facilities of the transit provider; the terminating carrier, not the originating carrier, should bear the financial obligation of transit services. Consequently, the Pa. PUC agrees with AT&T that the Commission will need to adopt a clear rule where the financial responsibilities of the sending and terminating carriers begin and end.

The Pa. PUC further agrees with AT&T that a necessary corollary to any “network edge” rule is a rule that explicitly guarantees that the party that has the financial responsibility to carry traffic to or from a network edge has the unfettered freedom to choose how, and by what arrangements, that party will carry the traffic on its side of the edge. A terminating carrier

¹⁵ *Sprint Communications Company L.P. Petition for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with GTE North, Inc.*, Docket No. A-310183F0002 1996 Pa. PUC LEXIS 160 (1996).

¹⁶ In affirming the *USF/ICC Transformation order*, the Tenth Circuit Court concluded that state commissions will continue to define the edges of the networks. See *In re FCC 11-161*, 753 F.3d 1015, 1128 (10th Cir. 2014).

¹⁷ *In re: Application of Southwestern Bell to Provide In-Region Inter and IntraLATA Long Distance Service*, 15 FCC Rcd 18354, 18390 (2000).

should not be able to dictate the manner in which a sending carrier delivers traffic to the terminating carrier's network. Accordingly, the Commission should continue to hold that one POI per LATA or a point in each LATA determined by a terminating carrier for Mutually Efficient Traffic Exchange is sufficient. However, the Commission should also adopt a network edge rule that *explicitly* ensures a carrier's freedom to choose how it will deliver traffic on its side of the designated edge in order to reduce arbitrage.

However, this right also must be appropriately balanced with the receiving carrier's right to determine how, and under what arrangements, it can actually receive that traffic. Also, it is one matter to determine how and under what arrangements traffic will be transmitted; it is quite another to determine what the proper compensation for those arrangements. On that issue, the Pa. PUC reiterates its conclusion, based on experience, that carriers should be properly compensated for the use of their networks by other carriers. The Pa. PUC has consistently advocated that a carrier whose traffic results in costs imposed on a network owned by another carrier, especially through indirect interconnection in the absence of an interconnection agreement, must compensate that carrier under state and federal law.¹⁸

3. Tandem Switching and Transport Charges

In the *USF/ICC Transformation Order*, the Commission adopted a rate transition that, in the final year of the transition, reduced tandem switching and transport charges to bill-and-keep only when the terminating price cap carrier also owns the tandem in the serving area.¹⁹ However, transport charges in other instances, *i.e.*, where the terminating carrier does not own

¹⁸ The Pa. PUC successfully defended challenges to resolving indirect interconnection intercarrier compensation disputes by properly applying federal law. *See generally AT&T Corp. v. Core Communications, Inc.*, 806 F.3d 715 (3^d Cir. 2015), 2015 U.S. App. LEXIS 20499.

¹⁹ For rate-of-return carriers, most of these charges are capped at interstate levels. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17943, para. 819.

the tandem, were not addressed at that time. In the *Public Notice*, the Commission seeks to refresh the record on issues surrounding transition of the remaining tandem switching and transport charges to bill-and-keep. Specifically, the Commission seeks comment on what steps it should take to transition the remaining elements associated with tandem switching and transport to bill-and-keep.

The Pa. PUC notes that the Tenth Circuit Court affirmed the Commission's determination that it had the statutory authority to establish bill-and-keep as a default compensation mechanism with respect to *terminating* intercarrier compensation traffic, including interstate traffic subject to section 251(b)(5) and intrastate traffic. Nevertheless, we note that the Commission unfortunately has created an asymmetry that contravenes the goal of the *USF/ICC Transformation Order* to bring terminating end office rates to parity. In adopting the tandem switching and transport rule, the Commission has inadvertently created a fundamental asymmetry regarding terminating transport charges whereby terminating access tandem switching and transport in only certain price cap ILEC and CLEC tandem/end office combinations are subject to bill and keep, while other tandem switching and transport services providing equivalent functionality remain compensable.

The *USF/ICC Transformation Order* created, and the Tenth Circuit decision affirmed, this approach. The current approach reflects the very real capital and operating expense challenges facing smaller carriers with carrier of last resort (COLR) obligations, particularly in rural areas, compared to larger carriers. This approach is settled law. The Pa. PUC urges the FCC to avoid taking any precipitous action that would disturb the existing rules until the current reforms are completed. Such reforms potentially include the federal universal service fund and

Connect America Fund mechanisms.²⁰

The Pa. PUC notes that wireline telecommunications and broadband access networks are characterized by high fixed costs, especially in rural areas. Since the demand for various telecommunications and broadband access services continues to evolve and increase, the capacity of these wireline networks must also keep pace through continued capital investments and corresponding economic costs. These economic costs need to be recovered, and such recovery should not be solely dependent on the end-user subscribers of such networks.²¹

Nevertheless, if the Commission decides to implement further reforms to tandem switching and transport charges, the Pa. PUC asserts that there should be a different transition period for originating tandem switching and transport services and that it should not be addressed as a part of this refresh of the record phase.

4. Transit Services

Transit service is the functional equivalent of tandem switching and transport, but refers to non-access traffic, whereas tandem switching and transport apply to access traffic. The Pa. PUC does not oppose Sprint's recommendation that incumbent local exchange carriers must provide transit service pursuant to section 47 U.S.C. § 251(c)(2), at total element long-run incremental cost (TELRIC) rates.

Conclusion

The Pa. PUC recommends that the Commission should not adopt any proposals or transition to further ICC reforms for originating access at this time as such action remains

²⁰ NTCA and WTA Comments at 6-11.

²¹ Peerless Network, Inc. et al. – Carrier Coalition Comments at 3 (certain intermediate carriers do not directly serve end-users).

premature. The Commission should not adopt a network edge rule that preempts independent state law. Rather, any action taken should *explicitly* ensure a carrier's freedom to choose how it will deliver traffic on its side of the designated edge in order to reduce arbitrage opportunities, while ensuring adequate compensation for use of other carriers' networks. Additionally, the Commission should not adopt a uniform compensatory regime for all third-party services that carriers use for indirect interconnection with a terminating telecommunications carrier's network until the current reforms already underway are completed and their results evaluated. Lastly, the Commission should continue to regulate transit services.

The Pa. PUC appreciates the opportunity to submit these reply comments and asks that the Commission give them due consideration.

Respectfully submitted,
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