



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

October 27, 2008

EX PARTE

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

ORIGINAL

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FCC Mail Room

Re: In the Matter of)	
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
In the Matter of Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
High Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board On Universal Service)	CC Docket No. 96-45
)	

Dear Ms. Dortch:

Pursuant to Commission rules, please include the attached Ex Parte Comments of the Pennsylvania Public Utility Commission in the corresponding Docket numbers of the above-referenced proceedings.

Sincerely Yours,

Joseph K. Witmer, Esq., Assistant Counsel
Pennsylvania Public Utility Commission

Enclosure

cc: Best Copy & Printing (via E-Mail)
FCC Chairman and Commissioners

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

In the Matter of)	
Developing a Unified Intercarrier Compensation Regime`)	CC Docket No. 01-92
In the Matter of Universal Service Contribution Methodology)	WC Docket No. 06-122
In the Matter of High Cost Universal Service Support)	WC Docket No. 05-337
In the Matter of Federal-State Joint Board On Universal Service)	CC Docket No. 96-45

**EX PARTE COMMENTS OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (PaPUC), in addition to supporting the Ex Parte Comments the Five State Commissions ("Five State Commissions"),¹ is filing these supplemental Ex Parte Comments. The PaPUC already filed Comments and Reply Comments on intercarrier compensation reform, including the pending petitions in the Petition of AT&T in CC Docket No. 08-152 and the Petition of Embarq in CC Docket No. 08-160.

¹ The Delaware Public Service Commission, the Public Service Commission of the District of Columbia, the New Jersey Board of Public Utilities, the New York Public Service Commission, and the Pennsylvania Public Utility Commission.

These Ex Parte Comments repeat the concerns set out in those filings. Repetition is necessary given the recent concern that any pending decision may rely largely on Ex Parte reform proposals submitted *since* the closing of the public record in these cases.

The first concern is the FCC's legal authority to preempt state authority over intrastate rates either *de jure* or *de facto*. The Ex Parte filings of the New England Council of Utility Commissioners (NECPUC)² and the National Association of Regulatory Utility Commissioners (NARUC)³ identify many legal infirmities. The PaPUC has set out similarly extensive legal considerations as well.⁴

The PaPUC repeats its observation that reform proposals which ostensibly claim they do not preempt the states begs the question of what happens if a state commission refuses to implement a federal mandate over a decision involving intrastate rates.⁵ The PaPUC also repeats its earlier concern that federal benchmark rates for local service

² Ex Parte Letter of the New England Conference of Public Utilities Commissioners to Marlene H. Dortch, Secretary, Federal Communications Commission, *In Re: Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, (October 17, 2008).

³ *In Re: Intercarrier Compensation*, CC Docket No. 01-92, *In the Matter of Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the ESP Exemption*, CC Docket No. 08-152, *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, *In the Matter of Petition for Declaratory Ruling Filed by CTIA*, WT Docket No. 05-194, *In the Matter of Jurisdictional Separations & Referral to the Federal-State Joint Board*, CC Docket No. 80-286, National Association of Regulatory Utility Commissioners (NARUC) Motion/Request for Public Comment on Recently Circulated "Report and Order," Order on Remand, and Further Notice of Proposed Rulemaking" on Universal Service and Intercarrier Compensation Reform, (October 21, 2008) (*NARUC Motion*).

⁴ *Petition of AT&T for Interim Declaratory Ruling and Limited Waivers*, CC Docket No. 08-152, Comments of the PaPUC, p. 13 (*AT&T Petition*); *In Re: Intercarrier Compensation*, CC Docket No. 01-92, Reply Comments of the PaPUC (February 1, 2007), pp. 3-21.

⁵ *AT&T Petition*, PaPUC Comments, p. 1 (*AT&T Petition*).

which exceed a state's benchmark, in Pennsylvania's case \$18.00, could undermine universal service through local rate increases.⁶ The PaPUC further reminds the FCC that prior federal reforms imposed rate increases with SLCs in Pennsylvania which produced penetration rate declines in Pennsylvania and the MACRUC Region during 2001-2008.⁷

The PaPUC particularly reminds the FCC that the current proposals do not address what happens in states with price cap regimes, including Pennsylvania, if those states have "exogenous events" or "change of law" provisions in their law.⁸ There is a distinct possibility that states will be forced to increase rates to fund a "dollar for dollar" recovery of *all lost intrastate revenues arising from a federally mandated reform of intrastate rates*. This would be particularly egregious in states where the increases support access rate reductions and broadband deployment programs in other regions that have done little, if any, reform of their access rates and local rates to implement either rate reform or broadband deployment programs. To date, Pennsylvania's efforts alone have cost in excess of \$1 Billion dollars.⁹

The PaPUC is concerned about the revenue impact from reform if those reforms reduce revenues available to competitive carriers in Pennsylvania. The PaPUC is equally

⁶ *AT&T Petition*, PaPUC Comments, p. 5.

⁷ *AT&T Petition*, PaPUC Comments, p. 5, 12, 19-20.

⁸ *AT&T Petition*, PaPUC Comments, p. 5 and 13; *Petition of Embarq Communications*, CC Docket No. 08-160, p. 8 (Embarq Comments).

⁹ Embarq Comments, p. 7; *In re: Inter-carrier Compensation Reform*, Docket No. 01-92, Comments of the Pennsylvania Public Utility Commission (October 25, 2006), pp. 3-4.

concerned if those same reforms reduce revenues to incumbent carriers that have undertaken extensive broadband deployment programs under state law. Pennsylvania has competitive carriers. Pennsylvania also has state laws that implemented rate reforms and local rate increases in order to fund broadband deployment. Carriers should not lose the intrastate revenues they need to compete nor should carriers lose the revenues they relied on to comply with state-law mandates on broadband deployment.

The PaPUC has very real problems with any interim or final decision or result that takes revenues away from carriers in states with broadband deployment commitments in order to further federal efforts at broadband deployment or reform in other regions where similar efforts are not in place. This concern is aggravated in situations where the same carriers with broadband deployment programs face intermodal constraints from competitive carriers. Reform should not prevent competitive carriers' from continuing to operate. Reform should not deprive incumbent carriers of the intrastate revenue stream they relied upon to finance their major long-term capital programs, specifically broadband deployment. Given the conditions in the current capital and credit markets, the FCC is ill-advised to rush headlong into decisions that harm competition or undermine an incumbent carrier's access to the capital needed to fund broadband deployment, particularly rural carriers.

These impacts and issues cannot be comprehensively considered in brief Ex Parte Comments let alone a federal interim or final order which justifies rates using selective references to incomplete or outdated Ex Parte filings. For that reason, the PaPUC implores the FCC to tailor any pending decision to the narrow requirements of the pending Core Remand decision.¹⁰ The issues set out in the latest plethora of Ex Parte reform proposals should be set out for public comment. Those issues have been pending for several years. There is no need to make hasty decisions in the current environment.

For these reasons, the PaPUC supports the alternative proposed in the October 21, 2008 filing of the National Association of Regulatory Utility Commissioners' filing.¹¹

/s/ James W. Cawley,
Chairman

/s/ Tyrone J. Christy,
Vice Chairman

/s/ Robert F. Powelson,
Commissioner

/s/ Kim Pizzingrilli,
Commissioner

/s/ Wayne E. Gardner,
Commissioner

Dated: October 27, 2008

¹⁰ *In re: Core Communications, Inc.* 531 F.3d 849 (D.C. Cir. 2008).

¹¹ NARUC Motion/Request, (October 21, 2008), p. 1.