



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
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IN REPLY PLEASE
REFER TO OUR FILE

October 27, 2008

EX PARTE OR LATE FILED

EX PARTE

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

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Received & Inspected

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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 Five State Commissions 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 ¹)	CC Docket No. 01-92
)	
In the Matter of Universal Service Contribution Methodology)	WC Docket No. 06-122
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In the Matter of High Cost Universal Service Support)	WC Docket No. 05-337
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In the Matter of Federal-State Joint Board On Universal Service)	CC Docket No. 96-45
)	

EX PARTE COMMENTS OF THE FIVE STATE COMMISSIONS

The undersigned five state regulatory commissions (“the Five State Commissions”)¹ have individually and as a group, timely filed a series of comments and/or reply comments in response to the above-captioned dockets, during the defined comment cycles set forth by the Federal Communications Commission (FCC). In recent weeks, there have been countless filings in these dockets, primarily by industry representatives, either advocating their positions on the critical issues of intercarrier

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 are the Five State Commissions supporting filing these Comments.

compensation (ICC) and Universal Service Fund (USF) reform, or submitting entirely new or modified proposals for such reform.

The Five State Commissions have very serious concerns regarding the industry's attempt to make eleventh hour filings, outside the proper public comment cycle, that afford little or no opportunity for appropriate review and scrutiny. Comprehensive ICC and USF reform should not be based upon unsupported and unsubstantiated last minute filings that have not been properly analyzed. For the reasons described herein, the FCC should not adopt or accept any of the recently filed proposals without first establishing a formal public comment period so that interested parties have an opportunity to comment on these far reaching proposals.

In comments filed earlier this year in response to an FCC Notice of Proposed Rulemaking on Forbearance Petitions at WC Docket No. 07-267 and FCC Docket No. 07-202, released November 30, 2007, the State Commissions argued, among other things, that an applicant seeking forbearance should be expected to file enough information, data and supporting documentation to establish a *Prima Facie* case on the first filing date.² The concerns expressed in those comments are equally applicable in these ICC and USF dockets. The federal statute allows parties to submit *Ex Parte* filings after expiration of

² *In the Matter of Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance under Section 10 of the Communications Act of 1934, as Amended, Docket No. WC 07-267*, the Comments of the State Members of the Mid-Atlantic Conference of Regulatory Utility Commissioners (MACRUC) and Their State Commissions, (March 7, 2008), p. 3.

the federal comment and reply comment period. The Five State Commissions' experience has been that the industry files exhaustive supplemental data, information, or supporting documentation after expiration of formal filing periods. Substantial supplemental filings, such as those in the instant dockets, must be made available for review by state commissions.

As was stated in the Forbearance Comments, when Ex Parte filings are made very close to the expiration of a pending deadline for a decision, as is the case here, state commissions have little time to conduct a proper analysis. This is particularly true for controversial or very complex proceedings such as ICC and USF reform. Substantial supplemental filings often contain valuable and useful information, as well as new proposals, that need to be examined by a state commission if the decision will have an impact in the state in which the state commission has regulatory authority.

That is precisely the case here, where several of the late filed ICC and USF reform proposals would preempt states on intrastate ratemaking authority. Yet none of these proposals appear to contain an assessment of their impact on individual states, or individual carriers or a quantification of the overall dollar amount associated with the proposal. In fact, it appears that the only "quantification" on consumers and the only substantiation of the level of the uniform terminating access rate proposal of Verizon and AT&T (\$.0007), are contained in a six page slide presentation (filed by AT&T as an *Ex*

Parte on October 7, 2008)³ and a five page letter (filed by AT&T on October 13, 2008),⁴ both of which are void of any back-up data or proper justification. We concur with the Missouri Public Service Commission's comment that "... properly evaluating any comprehensive reform proposals must include a reasonable opportunity to analyze the proposal's projected impacts on companies, consumers and the universal service fund."⁵

While the Five State Commissions are concerned with the process with which these ICC and USF reform proposals and data are being provided to the FCC at the eleventh hour and not subject to proper review, we do have two further substantive concerns with the proposals as we understand them. First, many of the proposals would inappropriately preempt state authority. Second, many will improperly inflate the already strained federal USF and adversely impact state USFs, in the states where they have been established.

Several of the proposals would establish a uniform national terminating access service rate, thus preempting state authority over intrastate terminating access rates. To federalize intrastate access rates as proposed would disrupt the joint jurisdictional regime

³ Letter from Brian Benison, Director, Federal Regulatory AT&T Services Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission regarding Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92 (October 7, 2008).

⁴ Letter from Henry Hultquist, Vice President-Federal Regulatory AT&T Services, Inc., to Marlene H. Dortch, Secretary Federal Communications Commission regarding Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92 (October 13, 2008).

⁵ Ex Parte Presentation from Missouri Public Service Commission to Honorable Kevin Martin, Chairman Federal Communications Commission regarding Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92 (October 9, 2008).

that has evolved throughout the years and is without justification. FCC-ordered intrastate access rates would adversely impact the regulatory structure for intrastate telecommunications services and state USF funding mechanisms that are governed by the states.

Absent a clear and specific need and proper legal justification for the states to cede authority over intrastate access rates to the FCC, we believe it is inappropriate for the FCC to consider this course of action at this time. We agree with the National Telecommunications Cooperative Association that "... [t]here is nothing in Federal law, implicit or explicit, which provides a barrier to State Commissions to set intrastate (state) toll access rates or reciprocal compensation (local) access rates nor has Congress legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law. Indeed, ...the Act itself, pursuant to sections 152(b), 251(b)(5), 251(d)(3), 252(d)(2)(A)(ii), and 252(d)(2)(B)(ii), explicitly provides multiple barriers which prevent the FCC, not State Commissions, from setting intrastate (state) toll access rates and reciprocal compensation (local) access rates."⁶ Additionally, we share the New England Conference of Public Utilities Commissioners' concern over preemption: "Verizon's Plan and others like it should not be adopted, as they would require the FCC to illegally preempt state jurisdiction over intrastate traffic

⁶ *In re: Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Letter from Daniel Mitchell, Vice President Legal and Industry, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, (September 30, 2008), pp. 4-5.

and interconnection.”⁷ Reshaping ICC rates should not result in the preemption of state authority.

Second, and equally important to the Five State Commissions, is the impact that most of these proposals, if adopted, would have on the USF and ultimately the net contributor status of ratepayers in the five states. The Five State Commission Signatories have submitted detailed comments opposing the Missoula Plan during the designated comment cycles⁸ and, while we have not had an opportunity to receive or fully review all the details of these new proposals, it is clear that the construct of the AT&T/Verizon proposal, as well as the proposals from many rural carriers, are substantially similar to the Missoula Plan. We urge the FCC to reject these plans for the same reasons that we opposed the Missoula Plan: they inappropriately shift the burden of intercarrier payments to end-users in net contributor states including the Five State Commissions.

As explained in previous comments, ratepayers in our region have paid more than \$2 Billion in excess of what we have received from the USF in just four years (2003 – 2006) with an increase of over 80% from 2005 to 2006 alone.⁹ The size of the USF will increase with many of these new proposals, although, as stated above, a detailed

⁷ Ex Parte Letter of the New England Conference of Public Utilities Commissioners to Marlene H. Dortch, Secretary, Federal Communications Commission, regarding Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, (October 17, 2008), p. 14.

⁸ *In re: Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of the MACRUC Commissioners (October 25, 2006); Reply Comments of the MACRUC Commissioners (February 1, 2007); Comments of the MACRUC Commissioners (March 26, 2007).

⁹ *In Re: High Cost Fund, Federal-State Joint Board on Universal Service*, Docket Nos. CC 96-45, WC 05-337, Comments of the MACRUC Commissioners, (April 21, 2008), p. 2.

quantification of the impact has not been provided and/or analyzed. The consumers of net contributor states such as the Five State Commissions, that already pay more than their fair share for the public policy goal of universal service, will be further burdened with no tangible benefit in return, under these proposals. Not only would the proposals increase the Subscriber Line Charge, they would shift billions of dollars of intercarrier payments to the USF, in an effort to be "revenue neutral" to carriers. The premise that ICC reform must equate to revenue neutrality for affected carriers is flawed and should be rejected. Increases in the USF under the plans are focused more on achieving "revenue neutrality" for ILECs than on delivering benefits to consumers. In fact, low and middle-income, low-usage consumers, the least able to afford increases in their telephone bills, may well be substantially harmed.

The Five State Commissions implore the FCC to take a balanced and economically rational approach to ICC and USF reform. The Commission should not rush to judgment based on plans and proposals that have not been subject to the proper scrutiny by all affected entities. State regulators, consumer advocates and the industry should have an equal opportunity to review and analyze ANY reform proposal under consideration by the FCC. To do otherwise would not be in the best interest of the consumers of telecommunications services throughout the nation.

One interim solution could be a decision tailored to the narrow requirements of the pending Core Remand decision¹⁰ while setting this latest round of proposals for public comment.¹¹ This approach was taken in the pending Missoula Plan proposal and is appropriate here.

The Five State Commissions and the undersigned individual Commissioners appreciate the opportunity to file these Comments.

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

¹¹ *In re: Intercarrier Compensation*, CC Docket No. 01-92, Ex Parte Letter of Missouri Public Service Commission (October 9, 2008), p. 2; Ex Parte Letter of New England Conference of Public Utilities Commissioner (October 17, 2008), p. 11; *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).

On behalf of the Delaware Public Service Commission:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ J. Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

On behalf of the Public Service Commission of the District of Columbia:

/s/ Agnes A. Yates
Chairperson

/s/ Richard E. Morgan
Commissioner

/s/ Betty Ann Kane
Commissioner

On behalf of the New Jersey Board of Public Utilities:

/s/ Jeanne M. Fox
President

/s/ Frederick F. Butler
Commissioner

/s/ Joseph L. Fiordaliso
Commissioner

/s/ Nicholas Asselta
Commissioner

/s/ Elizabeth Randall
Commissioner

On behalf of the New York Public Service Commission

/s/ Peter McGowan
General Counsel

On behalf of the Commonwealth of Pennsylvania,
Public Utility Commission:

/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

/s/ Joseph K. Witmer, Esq.
Assistant Counsel

Dated: October 27, 2008