Before the
Federal Communications Commission
Washington, D.C. 20054

In the Matter of	)	
	)	
July 3, 2012	)	**WCB/Pricing No. 12-09**
Annual Access Tariff Filings	)	
	)	
	)	

APPLICATION FOR REVIEW OF THE WIRELINE COMPETITION BUREAU'S ORDER ON RECONSIDERATION, DA 12-1231 OF BETTY ANN KANE, CHAIRMAN OF THE PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

Pursuant to Section 1.115 of the Federal Communications Commission's (Commission) rules, Betty Ann Kane, the Chairman of the Public Service Commission of the District of Columbia (DC PSC) respectfully submits this Application for Review of the Wireline Competition Bureau's Order on Reconsideration, DA 12-1231, released on August 1, 2012 (Order on Reconsideration).[1] The *Order on Reconsideration* reversed the Bureau's earlier decision to suspend and investigate the Access Recovery Charge (ARC) rates contained in the 2012 annual access charge tariff filings by carriers that charge an ARC.[2] While not addressing the issue, the *Order on Reconsideration* apparently allows Verizon to exclude all Verizon Virginia residential customers from the payment of the ARC even though the Residential Rate Ceiling was not reached for most of the Virginia residential customers,[3] resulting in the unfair

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1 *See, In the Matter of July 3, 2012 Annual Access Tariff Filings*, WCB/Pricing No. 12-09, Order on Reconsideration, DA 12-1231, rel. August 1, 2012.

2 *Id.*

3 *Id.*

cross-subsidization by District of Columbia residential customers who are subject to Verizon's ARC.

The Commission should vacate the Bureau's *Order on Reconsideration* as it pertains to Verizon's tariff for several reasons. It is clear that the Verizon tariff involves application of a policy which has not previously been resolved by the Commission,[4] and involves application of a policy which should be overturned or revised by the Commission.[5]

PROCEDURAL HISTORY

In the *USF/ICC Transformation Order and FNPRM*,[6] the Commission permitted price cap carriers to recover a portion of their reduced intrastate and interstate terminating access service revenues from end users through the ARC. In 47 C.F.R. § 51.915(e)(3), price cap incumbent local exchange carriers (ILEC) are permitted to assess the ARC on end users in any of their jurisdictions, not just a jurisdiction in which they experience revenue reductions due to the interstate and intrastate terminating access rate reforms. The FCC capped the ARC at $0.50 per month per line for residential and single line business end users.[7] For multi-line business end users, the ARC is capped at a $1.00 monthly charge per line.[8]

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4 *See* 47 C.F.R. § 1.115(b)(2)(ii).

5 *See*, 47 C.F.R. § 1.115(b)(2)(iii).

6 *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 Board on Universal Service; Lifeline and Link Up; Universal Service Reform – Mobility Fund*, WC Dockets No. 10-90, 07-135, 05-337, 03-109, CC Dockets No. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking (USF/ICC Transformation Order and FNPRM), rel. November 18, 2011.

7 47 C.F.R. § 51.915(e)(5)(i).

8 47 C.F.R. § 51.915(e)(5)(ii).

In its Tariff Transmittal No.1191, Verizon submitted its proposed ARC, which included an ARC of $0.36 for residential and single line business customers in the District of Columbia, Maryland, Pennsylvania, Delaware, and New Jersey.[9] The tariff filing indicated that no residential ARC would be imposed in Virginia. On June 25, 2012, the DC PSC filed Comments on Tariff Transmittal No. 1191, raising two arguments: (1) the FCC should prohibit the calculation of the ARC on a holding company basis, as articulated in the DC PSC's previously filed Petition for Reconsideration;[10] and (2) Verizon improperly calculated its ARC by excluding all Virginia residential customers from the imposition of the ARC.[11]

On July 2, 2012, the Wireline Competition Bureau (Bureau), recognizing the complicated nature of the new rules implemented by the *USF/ICC Transformation Order* and the complexities associated with new Tariff Recovery Plans (TRPs) developed to ensure compliance with the updated rules, released, on its own motion, the *2012 Suspension Order*, which suspended for one day and set for investigation the ARCs contained in the 2012 annual access charge tariff filings.[12] The Bureau had substantial questions as to whether the vast majority of the tariffs were lawful, and whether those questions require further investigation.[13] Specifically, the Bureau was concerned that carriers did not correctly calculate their Eligible Recovery, which, in

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9 Verizon Transmittal 1191, Tariff F.C.C. No. 1, 4th revised page 4-17.1, filed June 18, 2012..

10 *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 Board on Universal Service; Lifeline and Link Up; Universal Service Reform – Mobility Fund*, WC Dockets No. 10-90, 07-135, 05-337, 03-109, CC Dockets No. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Petition for Reconsideration of the Public Service Commission of the District of Columbia, filed December 29, 2011.

11 *In the Matter of Verizon Telephone Companies Tariff Nos. 1, 11, 14, 16,* Verizon Transmittal 1191, Comments of the Public Service Commission of the District of Columbia, filed June 25, 2012.

12 *In the Matter of the July 3, 2012 Annual Access Charge Tariff Filings*, WCB/Pricing No. 12-09, 2012 Suspension Order, rel. July 2, 2012.

13 *Id.*

part, establishes the baseline from which carriers calculate their ARC charges and potential recovery from the Connect America Fund.[14] While the *2012 Suspension Order* addressed the DC PSC's Comments, it only addressed one of the issues included in the Comments and did not address the DC PSC's concerns regarding the correct calculation of the Verizon ARC.[15]

In light of the issues raised by the Bureau's 2012 Suspension Order, Betty Ann Kane, the Chairman of the DC PSC, submitted a Petition for Suspension of the Verizon Access Recovery Charge Tariff (Kane Petition for Suspension), arguing that Verizon's ARC improperly charges District of Columbia customers while it excludes all Virginia residential customers from the same charge even though the Residential Rate Ceiling was not reached for most of the Virginia residential customers.[16] Subsequent to the filing of the Petition, the Bureau, upon a further review and analysis of the annual tariff filings,[17] concluded that Verizon and other named carriers either correctly calculated their FY 2011 revenues and their Eligible Recovery amounts in their initial tariff filings or corrected such calculations in subsequent amendments to their tariff filings.[18] The Bureau, then, issued an *Order on Reconsideration* of its decision to suspend and set for investigation the revised tariff rates and associated transmittals listed in Appendix A to the 2012 Suspension Order. The Bureau ruled that the Kane Petition for Suspension was untimely, without addressing the fact that the arguments in the Kane Petition for Suspension had

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14 *Id.*

15 *2012 Suspension Order* at 2, n. 9.

16 *In the Matter of Verizon Telephone Companies Tariff Nos. 1, 11, 14, 16,* Verizon Transmittal 1191, Petition for Suspension of the Verizon Access Recovery Charge Tariff Filed by Betty Ann Kane, the Chairman of the Public Service Commission of the District of Columbia, filed July 30, 2012.

17 This analysis included review of newly-filed information that was unavailable for inspection by others before the June 25, 2012 deadline for petitions for suspension. *See, Order on Reconsideration* at 2, ¶ 4.

18 *See Order on Reconsideration*, DA 12-1231, issued on August 1, 2012.

been raised in a more abbreviated fashion in the DC PSC's Comments and had not been addressed by the Bureau.[19]

ARGUMENT

I. THE BUREAU DID NOT RESOLVE THE QUESTIONS AS TO WHETHER VERIZON LAWFULLY CALCULATED ITS ARC BY EXCLUDING ALL VIRGINIA RESIDENTIAL CUSTOMERS EVEN THOUGH ONLY A FEW VIRGINIA EXCHANGES REACHED THE RESIDENTIAL RATE CEILING.

In its ARC filing, Verizon proposed to charge District of Columbia, Delaware, Maryland, New Jersey and Pennsylvania, but not Virginia, residential and single-line business customers a $0.36 per month ARC. Verizon appeared to posit that since the Residential Rate Ceiling had been reached in a limited number of Virginia exchanges that all Virginia residential customers must be excluded, under Commission rules, from paying the ARC. In its Comments, the DC PSC specifically questioned whether the exemption of Virginia residential customers from the ARC was proper since the DC PSC did not believe that the Residential Rate Cap had been reached in Virginia.[20] The Bureau did not address this question in its *2012 Suspension Order*; instead, it refused to treat the Comments as a petition for suspension.

The Kane Petition for Suspension elaborated on the argument made in the Comments – that Verizon's ARC tariff was improper because it excluded Virginia residential customers from the imposition of the ARC even though the Residential Rate Ceiling had been met in only a few Virginia exchanges.[21] In the *Order on Reconsideration*, the Bureau refused to address this argument, deeming it untimely filed, even though it had been raised, albeit in a more rudimentary form, in the DC PSC's Comments. Thus, the Bureau has not made a determination on the issue

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19 *Id.*

20 DC PSC Comments at 3.

21 Petition for Suspension at 1-4.

raised in the Comments and the Petition for Suspension – whether under 47 C.F.R. § 54.915, a Price Cap ILEC can exclude all residential customers in a state from paying the ARC even though the Residential Rate Ceiling has only been reached in a few exchanges in the state.

The Bureau's failure to address this question of law permits Verizon to charge residential customers in states in which the Residential Rate Ceiling is not reached a higher, unfair ARC. Therefore, it is imperative that the Commission resolve this question so as to permit Verizon and other carriers to exclude from their calculations only those exchanges in which the Residential Rate Ceiling has been reached. This would prevent unfair burden-shifting that results in residential customers whose bills have not reached the Residential Rate Ceiling but that live in a state where a limited number of residential customers' bills have reached the ceiling from avoiding payment of the ARC. Otherwise, residential customers in other states will assume the burden of higher ARCs to make up the difference. After resolution of this important question of law, the Commission should require Verizon to refile an ARC tariff that excludes only those exchanges in Virginia that have reached the Residential Rate Ceiling from paying the ARC and imposes the ARC on residential customers in Virginia whose bills have not reached the rate ceiling.

II. THE COMMISSION SHOULD AMEND 47 C.F.R § 54.915(e)(3) TO REQUIRE VERIZON TO CALCULATE ITS ARC ON A STUDY AREA BASIS.

As it currently reads, 47 C.F.R. § 54.915(e)(3) permits Verizon to spread payment of the ARC to all customers in the holding company, which results in District of Columbia residents unfairly cross-subsidizing Virginia residential customers who are excluded from payment of the ARC. As the DC PSC has argued in its Petition for Reconsideration on this issue, the FCC should redress this iniquity by amending 47 C.F.R. § 54.915(e)(3) to eliminate calculating the

ARC on a holding company basis, and, instead, require Verizon to calculate its ARC on a study area basis. As a result of this amendment, District of Columbia residents will no longer unfairly cross-subsidize payment of the ARC to recoup losses in other jurisdictions.

CONCLUSION

For the foregoing reasons, the Commission should vacate the Bureau's decision regarding the Kane Petition for Suspension and determine that 47 C.F.R. § 54.915 does not permit Verizon to exclude all residential customers in a state in which the Residential Rate Ceiling has been reached in a few number of exchanges. If the Commission finds, as it should, that this interpretation is improper, the Commission should reject Verizon's ARC tariff so that Verizon can recalculate its ARC to include those Virginia residential customers whose bills have not reached the Residential Rate Ceiling. In a related matter, the Commission should also grant the DC PSC's Petition for Reconsideration regarding the calculation of the ARC contained in 47 C.F.R. § 54.915(e)(3) and require that ARCs be calculated on a study area basis instead of on a holding company basis.

Respectfully Submitted,

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