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

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| **In the Matter of** | ) | |
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| **July 3, 2012** | ) | **WCB/Pricing No. 12-09** |
| **Annual Access Tariff Filings** | ) | |
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**REPLY TO OPPOSITIONS TO THE 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 Reply to Oppositions to the Application for Review (Kane Application)[1] of the Wireline Competition Bureau's (WCB) Order on Reconsideration, DA 12-1231, released on August 1, 2012 (Order on Reconsideration).[2] Contrary to Verizon's Opposition,[3] the WCB has not responded to the question posed by the DC PSC and its Chairman in previous filings; namely, whether a price cap incumbent local exchange carrier (price cap ILEC) may refrain from imposing an Access Recovery Charge (ARC) in a state where only a few exchanges have reached the Residential Rate Ceiling. While it is

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1 *In the Matter of July 3, 2012 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, filed August 31, 2012.

2 *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.

3 *In the Matter of July 3, 2012 Annual Access Tariff Filings*, Opposition of Verizon to the DC Public Service Commission's Application for Review of ARC Order on Reconsideration, DA 12-1231, filed September 14, 2012. This document incorrectly titles the Application for Review as filed by the DC PSC, but it was filed by the Chairman of the DC PSC, not by the full DC PSC.

understandable that the Virginia State Corporation Commission staff (VSCC) does not desire the imposition of the ARC on its residential customers,[4] that does not negate the fact that District of Columbia residential and single line business customers are paying a higher ARC that they would be if Virginia residential customers in exchanges not affected by the Residential Rate Ceiling were charged an ARC.

**THE WCB DID NOT DETERMINE WHETHER A PRICE CAP ILEC CAN EXEMPT ALL RESIDENTIAL CUSTOMERS IN A STATE FROM PAYING AN ARC WHEN THE RESIDENTIAL RATE CEILING HAS NOT BEEN REACHED IN ALL EXCHANGES IN THE STATE.**

As the Commission's rules state, an application for review is properly filed when it involves a determination of a policy which has not previously been resolved by the Commission,[5] and involves consideration of a policy which should be overturned or revised by the Commission.[6] The Kane Application clearly followed these rules. The Kane Application clearly seeks a determination by the Commission regarding whether 47 C.F.R. § 51.915(e)(3) permits a price cap ILEC to exempt all residential customers in a state from paying the ARC when the Residential Rate Ceiling has been reached in a few exchanges in that state, since the WCB has not made a determination on this issue.[7] Contrary to Verizon's Opposition,[8] this question is different from the questions raised in the DC PSC's Petition for Reconsideration[9] of

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4 *In the Matter of July 3, 2012 Annual Access Tariff Filings*, Opposition to Application for Review (VSCC Opposition), filed September 17, 2012.

5 *See* 47 C.F.R. § 1.115(b)(2)(ii).

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

7 Kane Application at 5-6.

8 Verizon Opposition at 2-3.

9 *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.

47 C.F.R. § 51.519(e)(3). The question raised in the Kane Application dealt with the failure to interpret 47 C.F.R. § 51.519(e)(3); while the question in the Petition for Reconsideration concerns the rule itself. Verizon conflates these two distinct issues throughout its Opposition. Contrary to Verizon's claims, the WCB has not made any interpretation of 47 C.F.R. § 51.519(e)(3) to justify Verizon's interpretation of this rule. Since the WCB has not acted, the Kane Application seeks a Commission determination of the question of whether a price cap ILEC can exempt all residential customers in a state from paying the ARC when the residential rate ceiling has been reached in only a few exchanges.

**VERIZON'S INTERPRETATION OF 47 C.F.R. § 51.519(e)(3) LEADS TO INEQUITABLE ARCs.**

At the end of its Opposition, Verizon does explain that it exempted all Virginia residential customers from the ARC because it was easier and less costly to exempt these customers.[10] Verizon, and to a lesser extent, the VSCC, argue that since 47 C.F.R. § 51.519(e)(3) permits but does not require the ARC, price cap ILECs may calculate and impose the ARC in their discretion.[11] While price cap ILECs are not required to impose an ARC, that flexibility does not lead automatically to the conclusion that a price cap ILEC may unilaterally determine that certain customers will be exempt from the ARC just because they reside in a state in which the Residential Rate Ceiling has been reached for other exchanges in the state while residential customers in other states will pay the ARC. Under this interpretation, the ARC will be calculated but not applied on a holding company basis, which is inequitable to those residential customers who end up paying a higher ARC to compensate for the exclusion of other

09-51, WT Docket No. 10-208, Petition for Reconsideration of the Public Service Commission of the District of Columbia, filed December 29, 2011.

[10] Verizon Opposition at 6.

[11] Verizon Opposition at 5.

customers. The Commission should not permit the flexibility inherent in 47 C.F.R. § 51.519(e)(3) to be used so that the price cap ILEC can pick and choose which customers will bear the burden of the ARC. The Commission should not permit price cap ILECs to interpret 47 C.F.R. § 51.519(e)(3) in a way that promotes inequities among residential customers in different states by permitting price cap ILECs to exclude residential customers in certain states but not other states from paying the ARC.

**CONCLUSION**

Contrary to the allegations in Verizon's Opposition, the WCB did not determine whether a price cap ILEC can exempt all residential customers in a state from paying the ARC when the Residential Rate Ceiling has been reached in only a few exchanges in the state. Due to this silence, Verizon has interpreted 47 C.F.R. § 51.519(e)(3) for itself, determining which residential customers it will include and exclude in its ARC payments. These decisions place an unfair burden upon those customers in states where the Residential Rate Ceiling has not been met, since they pay a higher ARC to account for those customers who could pay an ARC but who are exempted by the price cap ILEC. The Commission needs to make this decision, not price cap ILECs. The Commission should grant the Kane Application.

Respectfully Submitted,

Betty Ann Kane

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September 24, 2012

## CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2012, a copy of the foregoing was sent via United States mail, postage prepaid, to the following:

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