



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

September 27, 2012

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

ATTENTION: WIRELINE COMPETITION BUREAU

RE: PETITION FOR CLARIFICATION OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION AND APPLICATION FOR REVIEW OF 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

WCB/Pricing File No. 12-07; WCB/Pricing File No. 12-09; WC Docket No. 10-90; Verizon Tariff Nos. 1, 11, 14, 16, and 20 –Transmittal Nos. 1191, 1191-2nd Amended

Dear Secretary Dortch:

The Pennsylvania Public Utility Commission hereby files its Petition for Clarification And Application for Review in the above-referenced matters. Please find enclosed one signed original and four copies. Please note that the PA PUC also filed the attached in each of these matters in electronic format with the FCC. Service provided in accord with the attached Certificate of Service. Please address any correspondence regarding this filing to the following:

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Sincerely,

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Pennsylvania Public Utility Commission

Enclosure
cc: Certificate of Service

**Before the
 FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554**

In the Matter of)	
)	
July 3, 2012)	WCB/Pricing File No. 12-09
Annual Access Tariff Filings)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	

**PETITION FOR CLARIFICATION OF THE
 PENNSYLVANIA PUBLIC UTILITY COMMISSION AND
 APPLICATION FOR REVIEW OF 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**

In accordance with the Federal Communications Commission (FCC or Commission) General Rules of Practice and Procedure, Sections 1.2, 1.41 and 1.429, 47 C.F.R. §§ 1.2, 1.41 and 1.429, the Pennsylvania Public Utility Commission (Pa. PUC) respectfully submits this Petition for Clarification (Petition) of a prior Wireline Competition Bureau (WCB) decision and an interpretative ruling in relation to the pending Application for Review of 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 (DC PSC Application) that was submitted on or about August 31, 2012.

As an initial matter, the Pa. PUC positions expressed in its Petition should not be construed as binding on the Pa. PUC in any matter brought before the Pa. PUC for adjudication. Moreover, the Pa. PUC reserves the right to put forward alternative positions and proposals in response to later events, including Ex Parte submissions to the Commission, the review of relevant comments and reply comments, and other legal or regulatory developments at the state or federal level. Furthermore, although the Pa. PUC Petition relies on and references the Commission's *USF/ICC Transformation Order*,¹ this should not be construed as a waiver of any appellate rights that the Pa. PUC maintains against this FCC ruling.²

The Pa. PUC seeks clarification and/or an interpretative ruling from the Commission regarding whether the Verizon Telephone Companies' (collectively Verizon) computation and allocation of the access recovery charge (ARC) amounts in their July 2012 annual access charge tariff filing can be reconciled with the statutory prohibition against undue and unlawful rate discrimination. 47 U.S.C. § 202(a). The Pa. PUC and the Commonwealth of Pennsylvania have a strong interest in how Verizon allocated the eligible recovery ARC amounts among its subsidiary ILECs because: (1) the relevant ARC amounts arise from reductions in *intrastate* switched carrier access rates over which the Pa. PUC maintains jurisdictional regulatory oversight; and, (2) the Pa. PUC and the Commonwealth of Pennsylvania wish to ensure that Pennsylvania end-user consumers of landline telecommunications services offered by Verizon Pennsylvania Inc. and Verizon North, LLC in Pennsylvania (collectively Pa. Verizon ILECs) contribute to ARC recovery in a manner that is lawful and reasonable. In support of its Petition the Pa. PUC states the following.

¹ *In re Connect America Fund, et al.*, WC Docket Nos. 10-90 *et al.*, (FCC Rel. Nov. 18, 2011), Report and Order and Further Notice of Proposed Rulemaking, *slip op.* FCC 11-161, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order* and subsequent related FCC rulings).

² *Pa. Pub. Util. Comm'n v. FCC*, Docket No. 11-9585 (10th Cir., December 5, 2011).

A. A Carrier's Calculation And Allocation Of The ARC Must Comply With All Applicable Law.

1. A Carrier Cannot Apply A Permissive Regulatory Directive In A Manner That Produces An Unlawful Discriminatory Result.

Verizon alleges that it calculated the allocation of its ARC eligible recovery amounts among its subsidiary incumbent local exchange carriers (ILECs) consistent with the directives at 47 C.F.R. § 51.915(e)(3) which specify that:

For the purposes of this section, a Price Cap Carrier holding company includes all of its wholly-owned operating companies that are price cap incumbent local exchange carriers. A Price Cap Carrier Holding Company may recover the eligible recovery attributable to any price cap study areas operated by its wholly-owned operating companies through assessments of the Access Recovery Charge on end users in any price cap study areas operated by its wholly owned operating companies that are price cap incumbent local exchange carriers.

47 C.F.R. § 51.915(e)(3).³

The relevant language in the Commission's *USF/ICC Transformation Order* stated the following:

We permit carriers to determine at the holding company level how Eligible Recovery will be allocated among their incumbent LECs' ARCs. By providing this flexibility, carriers will be able to spread the recovery of Eligible Recovery among a broader set of consumers, *minimizing the increase experienced by any one customer*. This also will enable carriers to more fully recover Eligible Recovery from end-users with rates below the \$30 Residential Rate Ceiling, limiting the potential impact on the CAF [Connect America Fund].

USF/ICC Transformation Order, ¶ 910, 26 FCC Rcd 17990, *slip op.* at 327 (emphasis added, footnotes omitted).

However, neither the language in 47 C.F.R. § 51.915(e)(3) nor the relevant discussion in the *USF/ICC Transformation Order* address the application of the Commission's permissive directives within the context of the statutory prohibition against unlawful rate discrimination. Indeed, the relevant and applicable statutory provision states the following:

³ The 47 C.F.R. § 51.915(e)(3) quote at page 3 of the September 17, 2012 Comments contained in the Opposition to Application for Review filed by the Virginia State Corporation Commission at Docket WCB/Pricing No. 12-09 differs slightly from the above direct quote from 26 FCC Rcd. 18195.

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

47 U.S.C. § 202(a).

Examination of the Verizon workpapers associated with the Verizon ILEC July 2012 tariff filing readily discloses that the total ARC amount involved is \$55,363,601.⁴ Although Verizon is arguing in its opposition to the DC PSC Application that its allocation of the eligible recovery ARC amounts has been performed consistent with Commission directives, Verizon does not address how this allocation comports with the statutory standard in 47 U.S.C. § 202(a).

Verizon admits that it “is not charging an ARC in Virginia because — as indicated in the workpapers attached to Verizon’s tariff materials — there are local rates in certain Verizon exchanges in Virginia that would exceed the \$30 rate ceiling and are thus ineligible for the ARC. *See* 47 C.F.R. § 51.915(b)(12).” Verizon continues that as “an administrative matter, it would have been *difficult and costly* to implement different ARC rates on an exchange-by-exchange basis, particularly within the same state,” and that “[c]onsistent with the Commission’s objective to avoid customer confusion from variation in end-user charges, Verizon also determined to charge, or not to charge, the ARC on a statewide basis.”⁵ The same workpapers referenced above also disclose that Verizon has chosen not to apply any ARC rates whatsoever to residential customers of Verizon ILECs not only in Virginia but also in New York and California.⁶

⁴ Verizon Tel. Cos., 2012 Annual Filing (VZTCAN12.xls) Appendix B, Eligible Recovery TRP (ERTRP) Revised, Revision Filed 7/2/2012, Transmittal No. 1191 Amended (redacted and non-proprietary). http://fjallfoss.fcc.gov/cgi-bin/ws.exe/prod/ccb/etfs/bin/binary_out.pl?133831

⁵ Verizon, *Opposition of Verizon to the DC Public Service Commission’s Application for Review of ARC Order On Reconsideration, DA 12-1231*, WCB/Pricing File No. 12-09, filed September 14, 2012, at 5-6 (Verizon Opposition, emphasis added).

⁶ Verizon Tel. Cos., 2012 Annual Filing (VZTCAN12.xls) Appendix B, ARCRCTPR-N Revised, Revision Filed 7/2/2012, Transmittal No. 1191 Amended (redacted and non-proprietary). http://fjallfoss.fcc.gov/cgi-bin/ws.exe/prod/ccb/etfs/bin/binary_out.pl?133834. The Verizon workpapers contain the following notations: “The \$1.87 EAS charge for NY is not applicable to all exchanges. All exchanges exceed the \$30 benchmark with or without the EAS charge. Verizon will apply the ARC at a state level. Because one or more exchange exceeds the \$30 benchmark in CA and VA, all Residence and BRI lines in those states will not be billed an ARC.”

With the exclusion of the ARC in these three states, Verizon cannot recover the full ARC amount of \$55.36 million if there are no ARC charges imposed on certain end-user categories in these particular states. For example, if Verizon does not recover the full \$3,895,569 ARC amount attributable to Verizon ILEC operations in Virginia (or 7.04% of the total \$55.36 million ARC recovery amount) without a residential ARC, Verizon must over recover the remainder of this amount from its operations in other states in order to make up the difference of under recovery in Virginia (as well as in California and New York). Below, is a summary table with the attributable Verizon ARC eligible recovery amounts for certain states:

Verizon ILEC State	Eligible Recovery Amount	Percent of Total
California	\$7,105,576	12.83%
Florida	\$5,626,714	10.16%
Maryland	\$5,722,835	10.34%
New Jersey	\$5,083,473	9.18%
New York	\$15,061,300	27.20%
Pennsylvania	\$9,849,307	17.79%
Texas	\$2,841,943	5.13%
Virginia	\$3,895,569	7.04%

Source: Verizon Tel. Cos., 2012 Annual Filing (VZTCAN12.xls) Appendix B, Eligible Recovery TRP (ERTRP) Revised, Revision Filed 7/2/2012, Transmittal No. 1191 Amended (redacted and non-proprietary). http://fjallfoss.fcc.gov/cgi-bin/ws.exe/prod/ccb/etfs/bin/binary_out.pl?133831

A preliminary Pa. PUC calculation⁷ indicates that Pennsylvania end-user consumers of Pa. Verizon ILEC services will contribute no less than \$1.35 million towards this ARC under recovery by Verizon ILECs in other states. This contribution represents at least 2.44% of the overall \$55.36 million ARC recovery amount and 13.71% of the \$9.85 million Verizon ARC recovery attributable to Pennsylvania. Given that the eligible ARC recovery by Verizon ILECs in the states of Virginia, New York and California amounts to \$26,062,445 (or 47.08% of the overall \$55.36 million amount) and a residential ARC rate is not being applied in those states, there is arguably an over recovery of attributable ARC amounts in Pennsylvania, which may be contrary to Section 202 of the Communications Act of 1934 as amended (Act). 47 U.S.C. § 202(a).

⁷ This preliminary calculation was performed on the basis of proprietary access line data as of December 31, 2011 filed with the Pa. PUC and assumed residential and business access line losses on a going-forward basis. The calculation did not include a number of categories of reportable access lines.

Furthermore, this is not a “one-time” issue. Since the Verizon ILECs can avail themselves of ARC recovery for a multi-year period, with the continuous exclusion of residential ARC recovery from Verizon ILEC operations in Virginia, California, New York or additional states, the potential over recovery of the ARC from ratepayers in the remaining Verizon ILEC states will continue to compound.

The Pa. PUC’s preliminary calculation shows that Verizon’s allocation of its ARC revenue requirement transfers rate effects among states, especially where a residential ARC is being charged by the Verizon ILEC, including in Pennsylvania. The transfer of these rate effects may amount to undue and unlawful rate discrimination under Section 202 of the Act as “any undue or unreasonable preference or advantage to any particular person, class of persons, or locality” 47 U.S.C. § 202(a).

The Pa. PUC is sympathetic to Verizon’s arguments that imposition of ARC rates on an exchange-by-exchange basis within a particular state could be administratively burdensome. However, Verizon had other reasonable alternatives to address this issue, including the following: (1) Implement a differentiated ARC rate for single-line business customers up to the full and permissible amount of \$0.50 per access line per month in those states where the statewide residential ARC is currently zero (\$0) rather than the \$0.36 rate currently in place; (2) implement a differentiated ARC rate for multi-line business customers up to the full and permissible amount of \$1.00 per line per month in those states where the statewide residential ARC is currently zero (\$0) rather than the \$0.86 rate currently in place; and, (3) implement a residential ARC in Virginia and California with a preprogrammed credit so that the imposition of the ARC could have been automatically “cancelled out” in exchanges where the total residential bill would have exceeded the \$30 limit under the Commission’s regulations. An accompanying note on the customer’s monthly invoice could have easily and readily explained that the ARC residential rate element was not imposed where the total monthly residential bill would exceed the FCC-imposed ceiling of \$30 per access line per month thus avoiding any potential “customer confusion” issues.

The workpapers readily disclose that a large number of Verizon ILEC exchanges both in Virginia and California have total residential charges that are far below the FCC imposed ceiling of \$30 per access line per month. Therefore, excluding all of the Verizon ILEC exchanges from the statewide imposition of a residential ARC in Virginia and California may have been efficient

for Verizon's centralized legacy billing systems, but have shifted the ARC recovery burden to other states including Pennsylvania. The Pa. PUC requests clarification regarding how excluding all Verizon ILEC exchanges from the statewide imposition of a residential ARC in California and Virginia is consistent with 47 U.S.C. § 202(a).

This shifting of the ARC recovery amounts across state jurisdictions also has the net effect of either shifting intrastate costs of switched carrier access services among states or, alternatively, shifting the properly attributable transition intrastate costs of the Commission's intercarrier compensation reform from one or more states to others.⁸ Either event potentially results in the undue discriminatory pricing of *basic* landline telecommunications services that can cause inimical results in such areas as the maintenance of basic universal service and may not be consistent with the Commission's professed goal of "minimizing" the ARC associated rate "increase experienced by any one customer."⁹ It seems doubtful that the Commission's *USF/ICC Transformation Order* reforms intended to accomplish such a less than desirable regulatory policy goal.

2. A Carrier Cannot Utilize A Permissive Regulatory Delegation Of Authority In A Manner That Produces An Unlawful Discriminatory Result.

Assuming *arguendo* that the language in 47 C.F.R. § 51.915(e)(3) and the Commission's *USF/ICC Transformation Order* provide an expansive permissive regulatory delegation of authority to an ILEC holding company to virtually allocate the recovery of ARC amounts among its ILECs that operate in a number of states as the holding company "sees fit," the holding company and its regulated ILECs continue to function within the statutory framework of the Act. Consequently, even under such an expansive permissive regulatory delegation of authority, the Pa. PUC does not believe that Verizon and its ILECs can escape the statutory prohibitions of non-discrimination contained in 47 U.S.C. § 202(a). Consequently, the recovery of the ARC amounts that are attributable to the operations of Verizon ILECs in specific states must still be accomplished in a non-discriminatory manner. Thus, the Pa. PUC requests clarification that the

⁸ The Pa. PUC has appealed the *USF/ICC Transformation Order*. *Pa. Pub. Util. Comm'n v. FCC*, Docket No. 11-9585 (10th Cir., December 5, 2011).

⁹ *USF/ICC Transformation Order*, ¶ 910, 26 FCC Rcd 17990, *slip op.* at 327.

recovery of ARC amounts be based on state-specific study areas of the holding company ILECs.¹⁰

3. A Carrier's ARC Calculation And Allocation Must Also Comply With The Section 254(k) "Reasonable Share" Requirement.

Similarly, to the extent that the ARC (an FCC imposed rate element) represents intrastate switched carrier access costs and thus joint and common costs of basic access to the landline network of an ILEC in the broader context of universal service, the shifting of ARC recovery amounts between states for a particular ILEC holding company may also violate the statutory prohibition in Section 254(k) of the Act "that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services." 47 U.S.C. § 254(k). Simply put, PA Verizon ILEC end-user consumers should not be placed in the position of paying for the intrastate joint and common costs of basic Verizon ILEC network access in Virginia, California and New York. Furthermore, such cross-state transfers potentially undermine the process of jurisdictional separations when the Commission has not yet developed a new set of separations rules that adequately address its intercarrier compensation transition reforms.¹¹

¹⁰ Although the FCC stated in a footnote that "while it may be that holding companies will allocate ARC amounts to markets where their incumbent LECs face less competitive pressure, those markets would likely be ones that are relatively costly to serve," this pronouncement does not provide conclusive guidance on holding company ILEC allocation and recovery of ARC amounts. *USF/ICC Transformation Order*, n. 1791, 26 FCC Rcd 17990, *slip op.* at 327.

¹¹ *In re Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund, et al.*, Pa. PUC Docket No. I-00040105 *et al.*, Office of Consumer Advocate, Affidavit of Dr. Robert Loube, April 9, 2012, at 15.

B. Conclusion

The Pa. PUC respectfully requests that the Commission grant the Pa. PUC Petition for Clarification of the Wireline Competition Bureau Order on Reconsideration, released on August 1, 2012, at WCB/Pricing No. 12-09, DA 12-1231, and issue the appropriate interpretative ruling whether Verizon computed and allocated the recovery of the access recovery charge (ARC) amounts in the July 2012 annual access charge tariff filing in a manner that complies with the statutory prohibition against unlawful rate discrimination under Section 202 of the Act. 47 U.S.C. § 202(a). In addition, the Pa. PUC requests that:

1. The Commission grant the pending Application for Review of 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.
2. The Commission grant all other proper relief.

Respectfully Submitted,



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Dated: September 27, 2012

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2012, a copy of the foregoing document, Petition For Clarification Of The Pennsylvania Public Utility Commission And Application For Review Of 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, WCB/Pricing File No. 12-07; WCB/Pricing File No. 12-09; WC Docket No. 10-90; Verizon Tariff Nos. 1, 11, 14, 16, and 20 –Transmittal Nos. 1191, 1191-2nd Amended was electronically filed with the Federal Communications Commission, and that in accordance with the FCC's Rules of Practice and Procedure, a hard paper copy was mailed via U.S. Mail, First Class, postage prepaid to the following:

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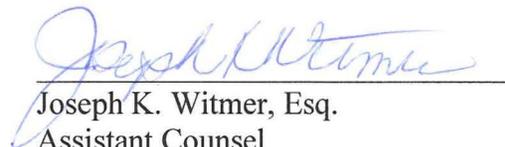
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