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PUBLIC SERVICE COMMISSION

October 19, 2012

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 112<sup>th</sup> Street, SW  
Washington, DC 20554

***Re: In the Matter of July 3, 2012 Annual Access Tariff Filings, WCB/Pricing No. 12-09; Petition for Reconsideration of the Public Service Commission of the District of Columbia, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208***

Dear Ms. Dortch:

The Maryland Public Service Commission ("MPSC") supports and shares the concerns raised in the District of Columbia's Public Service Commission's ("DC PSC") *Application for Review* of the FCC's Wireline Competition Bureau's *Order on Reconsideration* filed August 31, 2012, DC PSC's pending *Petition for Reconsideration* filed December 29, 2011, and Pennsylvania Public Utility Commission's ("PA PUC") *Petition for Clarification and Application for Review* filed September 27, 2012.

In the *USF/ICC Transformation Order*<sup>1</sup>, the Federal Communications Commission ("Commission" or "FCC") adopted "...a uniform national bill and keep framework as the ultimate end state for all telecommunications traffic exchanged with a LEC."<sup>2</sup> The *USF/ICC Transformation Order* sets forth that the transition to a bill-and-keep system would take place over several years beginning with requiring carriers to reduce intrastate intercarrier compensation ("ICC") rates for terminating traffic. To mitigate the effect of lost intercarrier compensation revenues on carriers, the FCC adopted the new 47 C.F.R. § 51.915(e) permitting price cap carriers to recover a portion of their reduced intrastate and interstate terminating access

<sup>1</sup> *In the Matter of 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 an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform -- Mobility Fund*, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking (Nov. 18, 2011).

<sup>2</sup> *USF/ICC Transformation Order* at ¶34.

service revenues from end users through an Access Recovery Charge (“ARC”). The new rule contained certain limitations including: 1) capping the monthly ARC increase to \$0.50 per year for residential or single-line business customers and \$1.00 per line per year for a multi-line business customer<sup>3</sup> and 2) establishing a Residential Rate Ceiling of \$30 per month for all incumbent LECs, which “prevents carriers from charging an ARC on residential consumers already paying \$30 or more.”<sup>4</sup> Further, the new 47 C.F.R. § 51.915(e)(3)<sup>5</sup> permits price cap carriers to determine at the holding company level how Eligible Recovery will be allocated among their incumbent LEC’s ARCs.”<sup>6</sup>

DC PSC’s *Petition for Reconsideration* asserts that 47 C.F.R. § 51.915(e)(3), the holding company provision, unfairly permits price cap companies to spread ARC costs “among jurisdictions so that customers in areas that have lower residential rates may be assessed an ARC to recover costs that are lost in more costly areas.”<sup>7</sup> The DC PSC *Petition for Reconsideration* states that “there are no intrastate access charges to reform in the District of Columbia”<sup>8</sup> and therefore it is unfair to assess an ARC on its end users to make up the lost revenues in another jurisdiction.

The MPSC concurs with DC PSC’s *Petition for Reconsideration* in that we find the policy application of 47 C.F.R. § 51.915(e)(3) can produce disparate treatment among different jurisdictions governed by a holding company. For instance, Maryland is part of Verizon’s Mid Atlantic holding company and thus the calculation of the ARC imposed on Maryland end users is derived from the data obtained from all of Verizon’s Mid Atlantic states including Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania, and Virginia. Therefore, if Verizon sets the ARC to zero in one of the Mid Atlantic states, which is the case for Virginia, that by necessity unfairly shifts the lost revenue burden to other states in the region served by the holding company. The fact that inequitable results can occur as a result of the application of 47 C.F.R. § 51.915(e)(3) is not lost among the Mid Atlantic states including the Virginia State Corporation Commission (“VSCC”), which noted in its Staff Comments to the DC PSC’s *Application for Review* that “[t]o the extent the ARC is calculated at a holding company level, it can produce inequities among all jurisdictions involved.”<sup>9</sup>

Pursuant *USF/ICC Transformation Order*, Verizon on July 1, 2012 began assessing a \$0.36 ARC on Maryland residential end users while simultaneously setting Virginia’s ARC to zero. Verizon argues that it is not charging an ARC in Virginia because “there are local rates in certain Verizon exchanges that would exceed the \$30.00 Residential Rate ceiling and are thus

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<sup>3</sup> *USF/ICC Transformation Order* at ¶908.

<sup>4</sup> *USF/ICC Transformation Order* at ¶913.

<sup>5</sup> “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.”

<sup>6</sup> *USF/ICC Transformation Order* at ¶910. See also 47 C.F.R. § 51.915(e)(3).

<sup>7</sup> DC PSC *Petition for Reconsideration* at 3.

<sup>8</sup> *Id.*

<sup>9</sup> Comments of the VSCC Staff at 3.

ineligible for the ARC.”<sup>10</sup> Thus, Verizon’s interpretation and application of 47 C.F.R. § 51.915(e)(3) allows it to exempt Virginia from ARC. The MPSC is aware that the *USF/ICC Transformation Order* made clear that “carriers are not required to charge the ARC.”<sup>11</sup> Nonetheless, we believe that should a price cap carrier elect to charge an ARC pursuant 47 C.F.R. § 51.915(e)(3) the calculation of the ARC amongst the affected jurisdictions should be equitable and done in a manner that adheres with the Commission’s rule 47 U.S.C. § 202(a) prohibiting “unjust or unreasonable discrimination in charges, practices, classification, regulations, facilities, services for or in connection with like communication service...”<sup>12</sup> The PA PUC in its *Petition for Clarification and Application for Review* points out that although Verizon argues that its allocation of eligible ARC recovery 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).<sup>13</sup>

The PA PUC further notes that the burden shifting or over recovery of ARC “is not a “one-time” issue. Since Verizon ILECs can avail themselves of ARC for a multi-year period,...the potential over recovery of the ARC from ratepayers in the remaining Verizon ILEC states will continue to compound.”<sup>14</sup> Additionally, PA PUC argues that “[t]his 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.”<sup>15</sup>

For the reasons outlined above, the MPSC believes that Verizon’s policy application of the 47 C.F.R. § 51.915(e)(3) results in potential cross subsidization as argued by DC PSC in its *Application for Review* and possible rate discrimination as discussed in PA PUC’s *Petition for Clarification and Application for Review*. Thus, the MPSC supports the DC PSC’s *Petition for Reconsideration* and requests that the FCC reconsider 47 C.F.R. § 51.915(e)(3) and provide clarification and guidance on how this rule can be applied equitably amongst jurisdictions that have lower residential rates or in the case of DC have no intrastate access charges to reform.

Respectfully submitted,

/s/ Deirdre Y. Cheek

Deirdre Y. Cheek  
Associate General Counsel

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<sup>10</sup> *Opposition of Verizon to the DC Public Service Commission’s Application for Review of ARC Order On Reconsideration* at 5.

<sup>11</sup> *USF/ICC Transformation Order* at ¶908.

<sup>12</sup> 47 U.S.C. § 202(a).

<sup>13</sup> PA PUC *Petition for Clarification and Application for Review* at 4.

<sup>14</sup> *Id* at 6.

<sup>15</sup> *Id* at 7.