PUBLIC UTILITIES COMMISSION

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October 29, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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*, filed September 27, 2012; 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*, filed August 31, 2012; In the Matter of *July 3, 2012 Annual Access Charge Tariff Filings*, WCB/Pricing File No. 12-09; *Connect America Fund*, WC Docket No. 10-90.**

Dear Ms. Dortch:

Pursuant to Section 1.1200 and 1.1204 of the Federal Communications Commission's (Commission) rules, the California Public Utilities Commission (CPUC) submits this *ex parte* communication to express opposition to the *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*, filed September 27, 2012, (Pa. PUC Petition) and the *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*, filed August 31, 2012, in the above referenced dockets (Kane Application for Review). The Pa. PUC Petition and Kane Application for Review purport to seek 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 are consistent with federal law. To the extent the Pa. PUC Petition and Kane Application for Review seek to have the Commission mandate that Verizon's ARC be assessed upon residential customers of Verizon in the State of California, the CPUC opposes both the Pa. PUC Petition and the Kane Application for Review.

The Kane Application for Review questions Verizon's computation and allocation of the ARC amounts in their July 2012 annual access charge tariff filing, claiming that Verizon acted improperly by not imposing the residential ARC in Virginia when the Residential Rate Ceiling

had been met in only a few exchanges in Virginia.[1] The Kane Application for Review further argues that allowing a price cap ILEC to 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 that state results in unfair burden-shifting of ARC recovery to other jurisdictions.[2] The Pa. PUC Petition supports the Kane Application for Review, and notes that Verizon has chosen not to apply the ARC rate to residential customers of Verizon incumbent local exchange carriers (ILECs) in California, New York, and Virginia.[3] The Pa. PUC similarly claims that the exclusion of the ARC in these three states "arguably" results in an over-recovery of attributable ARC amounts in Pennsylvania.[4] The Pa. PUC further argues that Verizon could have implemented an alternative scheme, including the implementation of a residential ARC in California (and Virginia) with a preprogrammed credit so that the imposition of the ARC would be automatically "cancelled out" in exchanges where the total residential bill would have exceeded the $30 Residential Rate Ceiling under the Commission's regulations.[5] However, the Commission should deny Pa. PUC's Petition, as well as the Kane Application for Review, because Verizon's ARC calculations, and its determination not to implement the ARC in California, are in compliance with the Commission's rules.

The USF/ICC Transformation Order[6] created a new end user charge, the ARC that ILECs could impose on residential and business customers to recover a portion of revenue losses from Commission imposed intrastate and interstate access charge reductions. While ARCs may be imposed on customers' monthly bills, they are not mandated.[7] According to the Commission's rules, a price cap carrier, such as Verizon, is permitted to calculate the ARC on a holding company level basis and recover the charge from end users in any of the carrier's price cap plan study areas, except where such assessment would bring the residential monthly total to or above the Residential Rate Ceiling. In particular, 47 C.F.R. § 51.915(e)(3) states:

> For purposes of this subsection, 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

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[1] Kane Application for Review, at 5.

[2] Kane Application for Review, at 5-6.

[3] Pa. PUC Petition for Clarification, at 4.

[4] Pa. PUC Petition for Clarification, at 5. The Kane Application for Review similarly claims that it is unfair to assess an ARC to end users in the District of Columbia that accounts for intrastate revenue losses in other jurisdictions. (Kane Application for Review, at 7.)

[5] Pa. PUC Petition for Clarification, at 6.

[6] Report and Order and Further Notice of Proposed Rulemaking, *In re Connect America Fund, et al.*, WC Docket Nos. 10-90, *et al.*, 26 FCC Rcd 17663 (FCC Rel. Nov. 18, 2011) (USF/ICC Transformation Order).

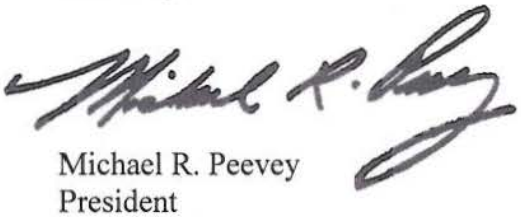
[7] USF/ICC Transformation Order, at ¶ 908.

> 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.

Verizon's ARC allocation follows the Commission's rules. As an initial matter, and as stated above, implementation of the ARC is voluntary, not mandatory. Verizon does not have to impose the ARC in California, regardless of whether any of the applicable rates in a study area have reached the Residential Rate Ceiling. Secondly, the rules are meant to confer flexibility to carriers by permitting them to allocate ARCs at the holding company level. ILECs were accorded the ability to exercise their own business judgment in order to achieve the Commission's policy goals of minimizing customer confusion, spread the recovery among a broader set of customers while ensuring that rates remain affordable, and enabling carriers to recover lost intercarrier compensation revenues from their own customers to the greatest extent possible, thus limiting the potential drain on the Universal Service Fund.[8] Thus, Verizon has the discretion to choose not to charge the ARC in California, in whole or in part. Finally, the Commission understood that the rule may not result in an even allocation of the ARC, noting that certain ILECs may choose to refrain from charging ARCS in whole or in part "based on competitive constraints or other considerations," and that holding companies may allocate ARC amounts to less competitive markets.[9] The rules allow Verizon to determine at the holding company level how to allocate the ARC; there is no requirement that Verizon charge the ARC in every exchange where the total residential bill would not exceed the $30 limit.

The fact that these rules have caused frustration and a sense of unfairness is regrettable; however, the CPUC objects to the direction of this frustration towards the residential customers of California. The CPUC does not agree that the Commission should revise Verizon's rates in California simply because Pennsylvania (or D.C., for that matter) is unhappy with its rates. Verizon's allocation of ARC amounts was performed consistently with Commission directives, and the Commission should deny the Pa. PUC Petition, as well as the Kane Application for Review.

Sincerely,



Michael R. Peevey
President
California Public Utilities Commission

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[8] USF/ICC Transformation Order, at ¶¶ 908-910.
[9] USF/ICC Transformation Order, at fns. 1781, 1791.