10-90

ACCEPTED/FILED

JAN 8 - 2013

Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

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

OPPOSITION TO APPLICATION FOR REVIEW

Comes now the Staff of the Virginia State Corporation Commission ("VSCC Staff"), by counsel, and files pursuant to § 1.115 of the Rules of Practice and Procedure of the Federal Communications Commission ("FCC") its opposition 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 ("Kane Application for Review") filed with the FCC on August 30, 2012. To the extent the Kane Application for Review seeks to have the FCC mandate that Verizon's Access Recovery Charge ("ARC") be assessed upon residential customers of Verizon in the Commonwealth of Virginia, the VSCC Staff opposes the Kane Application for Review.

In the Kane Application for Review, it is argued that the FCC "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."[1] As set forth in greater detail in the attached Comments of the VSCC Staff, such a request is contrary to regulations adopted by the

[1] Kane Application for Review at 6.

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FCC in the underlying proceeding,[2] and should not be imposed. Accordingly, the VSCC Staff opposes the Kane Application for Review and asks the FCC to deny the Kane Application for Review.

Respectfully submitted,

STAFF OF THE VIRGINIA STATE
CORPORATION COMMISSION

/s/ Raymond L. Doggett, Jr.
By Counsel

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Dated: September 17, 2012

[2] *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 a Unified Intercarrier Compensation Regime; Federal-State Joint 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, 26 F.C.C.R. 17663 (2011) (released Nov. 18, 2011, published Nov. 29, 2011 (76 Fed. Reg. 73830)), *appeal docketed,* In re: FCC 11-161, No. 11-9900 (10th U.S. Cir.).

Certificate of Service

I certify that a copy of the foregoing was this 17th day of September, 2012, filed electronically with the Federal Communications Commission, and, in accordance with § 1.115(f) of the FCC's Rules of Practice and Procedure, mailed, U.S. Mail, First Class, postage prepaid to: Secretary, Federal Communications Commission, Washington, DC 20554; Betty Ann Kane, Chairman, Public Service Commission of the District of Columbia, 1333 H Street, N.W., Suite 200, West Tower, Washington, D.C. 20005; Pricing Policy Division of the Wireline Competition Bureau, c/o Pamela Arluk, Esquire, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554; and Christopher M. Miller, Esquire, Verizon, 1320 North Courthouse Road, Ninth Floor, Arlington, Virginia 22201.

/s/ Raymond L. Doggett, Jr.

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Annual Access Tariff Filings	)	WCB/Pricing No. 12-09

COMMENTS OF THE
VIRGINIA STATE CORPORATION COMMISSION STAFF

The Staff of the Virginia State Corporation Commission ("VSCC") opposes the August 31, 2012 Application for Review of the Federal Communication Commission's ("FCC") Wireline Competition Bureau's Order on Reconsideration, DA 12-1231[1] of Betty Ann Kane, Chairman of the Public Service Commission of the District of Columbia ("Kane Application for Review").[2] The Kane Application for Review requests the Federal Communication Commission ("FCC") to act contrary to 47 C.F.R. § 51.915 (e) (3) and, if granted, could harm some residents of the Commonwealth of Virginia.

The Kane Application for Review requests that the FCC vacate the WCB August 1 Order and find that that Verizon violated 47 C.F.R. § 51.915 (e) (3) by excluding Verizon residential customers in Virginia from the Access Recovery Charge ("ARC") that went into effect on July 3, 2012,[3] in the District of Columbia as well as a number of other states. It further requests that the

[1] Wireline Carrier Bureau Order on Reconsideration issued August 1, 2012 ("WCB August 1 Order").

[2] The WCB August 1 Order dismissed as not timely filed the Petition for Suspension of Verizon Access Charge Tariff Filed by Betty Ann Kane, Chairman of the Public Service Commission of the District of Columbia on July 30, 2012, In the Matter of Verizon Telephone Companies Tariff Nos. 1,11, 14, 16; Transmittal 1191 (Kane Petition for Suspension").

[3] On July 2, 2012 the WCB issued an order suspending the tariffed ARC rates of a number of ILECs (including Verizon) for one day and set for investigation. The WCB August 1 Order completed the investigation of the tariffs of some ILECs (including Verizon).

FCC require Verizon to "recalculate its ARC to include those Virginia residential customers whose bills have not reached the Residential Rate Ceiling."[4] [5]

The VSCC understands the concerns raised initially by the Public Service Commission of the District of Columbia regarding 47 C.F. R. § 51.915 (e) (3) in its Petition for Reconsideration of the FCC's November 18, 2011 Report and Order and Further Notice of Proposed Rulemaking ("USF/ ICC Transformation Order"),[6] which was filed on December 29, 2011 ("DC PSC Reconsideration Petition"). As the DC PSC Reconsideration Petition points out, the USF/ICC Transformation Order created a new end user charge (ARC) that incumbent local exchange carriers ("ILECs") could, but were not required to, impose on both residential and business customers to recoup a portion of revenue losses from FCC ordered intrastate and interstate access charge reductions. An ARC[7] *may* be assessed on a monthly basis to primary residential and single business end users not to exceed $.50 per year.[8] Multiline business customers may be assessed up to a $1.00 per year.[9]

The DC PSC Reconsideration Petition is particularly concerned with the aspect of 47

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[4] Kane Application for Review, p. 7.

[5] C.F.R. § 51.915 (b) (11) sets the Residential Rate Ceiling at $30.00 for 2012. An ARC may not be assessed on residential customers to the extent it would bring the total charge above the $30.00 rate. The rate components that determine the residential rate are the federal Subscriber Line Charge, ARC, flat rate for local service, mandatory extended area service charges, state subscriber line charge, per line federal and state universal service fees, E911 charges, and state Telecommunications Relay Service charges.

[6] *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 a Unified Intercarrier Compensation Regime; Federal-State Joint 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, 26 F.C.C.R. 17663 (2011) (released Nov. 18, 2011, published Nov. 29, 2011 (76 Fed. Reg. 73830)), *appeal docketed*, In re: FCC 11-161, No. 11-9900 (10th U.S. Cir.).

[7] The ARC is a transitional charge that rate of return companies may implement for up to six years and price cap carriers may assess for up to five years.

[8] See 47 C.F. R. § 51.915 (e) (5) (i).

[9] See 47 C.F.R. § 51.915 (e) (5) (ii).

C.F.R. § 51.915 (e) (3) that permits a price cap carrier 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 area, except where such assessment would bring the residential monthly total to or above the Residential Rate Ceiling. 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 plan study areas operated by its wholly-owned operating companies through assessments of the Access Recovery Charge on end users *in any price cap plan study areas* operated by its wholly-owned operating companies that are price cap plan incumbent local exchange carriers. (Emphasis added)

The DC PSC Reconsideration Petition states that there are no intrastate access charges in the District of Columbia and asserts, therefore, that it is unfair to assess an ARC to end users in the District that accounts for "intrastate access revenues "lost" in another jurisdiction."[10] The potential unfairness of 47 C.F. R. § 51. 915 (e) (3) raised by the DC PSC Reconsideration Petition, however, is not limited to that jurisdiction. Many states have undertaken intrastate access reform, rebalanced rates and/or granted regulatory and pricing flexibility. To the extent the ARC is calculated at a holding company level, it can produce inequities among all jurisdictions involved. The USF/ICC Transformation Order considers the ARC to be a transitional tool, in part, to target "customers paying lower rates"[11] and not just as a vehicle to replace lost access revenues.

The Kane Application for Review goes beyond the stated purpose of DC PSC Reconsideration Petition as it seems to redirect its "frustration" with the FCC rule to the Verizon's residential customers in Virginia. The Kane Application for Review appears to

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[10] DC PSC Reconsideration Petition, p. 3.

[11] USF/ICC Transformation Order, ¶ 906. The residential local exchange rates in all Verizon exchanges in Virginia are higher than those in the District of Columbia.

misread the FCC's rules and contains several inaccuracies and omissions.

First, the Kane Application for Review argues that Verizon acted improperly by not applying the residential ARC in Virginia[12] when the Residential Rate Ceiling had been met in only a few exchanges in Virginia. It says that the WCB failed to address a question of law on "...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 that state."[13]

However, an ILEC is not required to charge the ARC in any of its study areas regardless of whether any of the applicable rates in a study area have reached the Residential Rate Ceiling. 47 C.F.R. § 51.915 (e) states that "a Price Cap Carrier may elect to forgo charging some or all of the Access Recovery Charge." In addition, while 47 C.F.R. § 51.915 (e) (5) (iii) does not permit the ARC to be assessed on residential customers whose rates exceed the Residential Rate Ceiling, the FCC made it clear in the USF/ICC Transformation Order that "importantly, carriers also are *not* required to charge the ARC"[14] and "not all carriers will elect or be able to charge the ARC due in part to competitive pressures...."[15] Moreover, the DC PSC Petition for Reconsideration recognizes that the ILEC has this flexibility in determining where it will apply the ARC.[16]

In addition, we are concerned that the Kane Application for Review directs its "cross-subsidization" arguments only at Verizon's residential customers in Virginia. We disagree with

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[12] Verizon is charging the ARC to single line and multi-line business customers in Virginia.

[13] Kane Application for Review. p. 6.

[14] USF/ICC Transformation Order, ¶. 908.

[15] Ibid ¶ 852

[16] DC PSC Petition for Reconsideration, pp. 4-5

the representation that Verizon's assessment of the ARC to residential customers in the District of Columbia and not in Virginia constitutes a cross-subsidy. The Kane Application for Review makes no reference to any independent analysis of the July 3, 2012 Verizon intrastate access changes in Virginia. More importantly, nothing in the associated DC PSC or Kane filings reflect any knowledge about the regulatory or competitive environment in Virginia, particularly regarding access reform initiatives, competitive pressures on local rates, and existing pricing flexibility for local rates. For example, Verizon already has the regulatory authority to raise residential local rates annually in Virginia by more than the $.36 ARC that was implemented in other Verizon states, and has been doing so.

Nonetheless, as we stated above, the inequity between states (or study areas) is a result of the ARC being determined at the holding company level.[17] The Kane Application for Review seems to suggest that this inequity only applies in one limited instance where an ARC **could** be applied under the FCC rules but the ILEC **elects** not to. But that is an overly simplistic view and does not address other comparable situations. In virtually all study areas (in any jurisdiction), the ARC will either under recover or over recover the "lost" intrastate access revenues associated with that same study area because the ARC is determined on a holding company level.[18] As there are no intrastate access charges in the District of Columbia, the Kane Application for Review could, but does not, allege that the District of Columbia is potentially cross subsidizing customers in Verizon jurisdictions other than Virginia.

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[17] In any event, we do not believe the determination of the interstate ARC should account for any intrastate access reductions. In fact, the Virginia State Corporation Commission is part of the appeal of the USF/ICC Transformation Order that is presently before the United States Court of Appeals for the Tenth Circuit (In re: FCC - 161(No. 1190)).

[18] We also note that whether or not the Residential Rate Ceiling has been met in any study area of an ILEC is not indicative of whether any July 3, 2012 intrastate access charge reduction were made in that jurisdiction. Therefore, the Kane Application for Review also seems to overlook that so called "cross-subsidization" situation.

In addition, neither the Kane Application for Review nor the Kane Petition for Suspension identifies that the Verizon ARC is applicable (and calculated) for all Verizon's operating company jurisdictions; not just those in the mid-Atlantic states.[19] Moreover, neither points out that Verizon has not implemented the $.36 ARC charge on residential customers in two other states.[20] The WCB August 1 Order dismissed the Kane Petition for Suspension as not timely filed but recognized that the DC PSC Petition for Reconsideration is still pending and stated that this is the appropriate vehicle for the FCC to address these issues.[21] We are sympathetic to the inequity concerns raised by the DC PSC Petition for Reconsideration and concur with the WCB as to the appropriate procedure to address those issues. However, Verizon is not violating 47 U.S. C. § 51.915 (e) (3) as it is **not** required to assess an ARC in Virginia or any other jurisdiction for that matter. Therefore, the FCC should not grant the Kane Application for Review.

Respectfully submitted,
Virginia State Corporation Commission Staff

William Irby
Director
Division of Communications

September 17, 2012

[19] Kane Petition for Suspension, p.3.

[20] Those states are New York and California, and we are aware that rates in some exchanges in one of those states are below the Residential Rate Ceiling. The Verizon operating companies in these states (as well as a number of other states) are included in the total of wholly-owned operating companies encompassing the Verizon Price Cap Holding Company.

[21] WCB August 1 Order, p. 2, fn. 10.