

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

Petition for Declaratory Order
Regarding State Jurisdiction to
Adjudicate Inter-Carrier Compensation
Disputes Concerning Dial-Up
ISP-Bound Traffic

WC Docket No. 14-70

**COMMENTS OF
THE CALIFORNIA PUBLIC UTILITIES COMMISSION
AND THE PEOPLE OF THE STATE OF CALIFORNIA**

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I. INTRODUCTION

The California Public Utilities Commission and the People of the State of California (California or CPUC) submit these comments in response to the Federal Communications Commission's (FCC or Commission) request for comment on a Petition for Declaratory Order (Petition) filed by the Pennsylvania Public Utility Commission (Pa. PUC).¹ The Pa. PUC seeks clarification on whether it may adjudicate inter-carrier compensation disputes when they arise between competitive local exchange carriers (CLECs) outside of Sections 251 and 252 (47 U.S.C. §§ 251 and 252) of the 1996 Telecommunications Act (Act), specifically when those disputes involve the exchange of local dial-up Internet Service Provider (ISP-bound) traffic. In addition, the Petition asks if a state may adjudicate such disputes when the state commission decision properly enforces the Commission's *ISP Remand Order*² and is consistent with Commission rules.³ The Pa. PUC asks the FCC to find that "the Pa. PUC has jurisdiction to adjudicate such disputes so long as the result is consistent with the *ISP Remand Order* and applicable law."⁴

The CPUC supports the Pa. PUC's request for clarification on this matter. In particular, CPUC agrees with the Pa. PUC's recommendation that the Commission find state commissions do in fact have and retain jurisdiction to adjudicate such disputes so

¹ Petition for Declaratory Order of the Pennsylvania Public Utility Commission, WC Docket No. 14-70 (filed April 30, 2014) (Petition), <http://apps.fcc.gov/ecfs/document/view?id=7521124305>.

² *Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001), Order on Remand, 24 FCC Rcd 6475 (2008).

³ Petition at 1.

⁴ *Id.*

long as the result is consistent with the *ISP Remand Order* and applicable law. Like the Pa. PUC, the CPUC has adjudicated inter-carrier compensation disputes, both between carriers that have interconnection agreements under Sections 251 and 252 of the Act, as well as between carriers that exchange traffic indirectly without an agreement, including CLECs. These disputes have involved charges for the transport and termination of various types of traffic and services including but not limited to ISP-bound dial-up traffic. Invariably, telecommunications carriers have argued that the 1996 Act, related orders of the FCC, or applicable court decisions have limited the jurisdiction of the CPUC to hear disagreements among carriers. The CPUC's position in all such cases has been that the 1996 Act established a division of responsibility between states and the federal government that delegated to state commissions, in the first instance, the job of resolving such inter-carrier disputes. State commissions are given authority to mediate disputes between local carriers, even when this touches on jurisdictionally interstate traffic, and even where Section 252 of the 1996 Act (arbitration) is not implicated. To the extent the U.S. District Court for the Eastern District of Pennsylvania decision referred to in the Petition may call into question state jurisdiction to adjudicate and resolve these disputes, the CPUC supports the Pa. PUC's request for clarification from the Commission to remove any uncertainty.

II. BACKGROUND

On May 16, 2014, the FCC's Wireline Competition Bureau (Bureau) released a Public Notice⁵ seeking comment on a Petition for declaratory order filed by the Pa. PUC. The Pa. PUC seeks clarification on whether it may "adjudicate intercarrier compensation disputes when they arise between competitive local exchange carriers (CLECs) outside Sections 251 and 252, 47 U.S.C. § 251 and 252, when they involve the exchange of local dial-up Internet traffic, and when the Pa. PUC decision properly enforces the *ISP Remand Order*⁶ and is consistent with Commission rules."⁷ The issue goes beyond dial-up ISP-bound traffic, however, as the Petition asks the Commission to "provide affirmative guidance on whether state commissions retain jurisdiction to deal with matters arising from the exchange of traffic between directly and indirectly interconnected carriers, including inter-carrier compensation disputes involving local ISP-bound traffic, through the proper application of federal and state law."⁸ Alternatively, if the Commission disagrees with making this finding, the Pa. PUC asks the Commission to issue a declaratory ruling describing the procedures that the Pa. PUC, and possibly other states, are to follow for transferring to the FCC all current and future inter-carrier compensation

⁵ Wireline Competition Bureau Seeks Comment on Petition for Declaratory Order Regarding State Jurisdiction to Adjudicate Intercarrier Compensation Disputes Concerning Dial-Up ISP-Bound Traffic, WC Docket No. 14-70, (DA No. 14-674); rel. May 16, 2014.

⁶ *Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001), Order on Remand, 24 FCC Rcd 6475 (2008) (*ISP Remand Order*).

⁷ Petition at 1.

⁸ Petition at 4-5.

disputes and adjudications involving local dial-up ISP-bound traffic exchanged between indirectly interconnected CLECs.

The Petition was prompted by a recent decision and an accompanying Memorandum of Law of the U.S. District Court for the Eastern District of Pennsylvania (District Court), which overturned a ruling of the Pa. PUC on an inter-carrier compensation dispute between AT&T Communications of Pennsylvania, LLC and TCG Pittsburgh, Inc. (collectively, AT&T), and Core Communications, Inc. (Core). The District Court reasoned that states are totally preempted and lack jurisdiction to resolve such inter-carrier compensation disputes between CLECs without an interconnection agreement because the relevant exchange of ISP-bound traffic between the indirectly interconnected CLECs falls outside the scope of Sections 251 and 252 of the 1996 Act.²

The Petition states that the Pa. PUC's rulings relied in part on a Ninth Circuit case involving the CPUC, *AT&T v. Pac-West Telecomm*, 651 F.3d 980 (9th Cir. 2011) (*Pac-West*). That case involved a dispute before the CPUC between two California CLECs, AT&T Communications of California, Inc., Teleport Communications Group of San Francisco, Teleport Communications Group of Los Angeles, and Telecommunications Group of San Diego (collectively, AT&T) and Pac-West Telecomm, Inc. (Pac-West), concerning the rate that applied for Pac-West's termination of ISP-bound traffic. The parties in the *Pac-West* case had not entered into an interconnection agreement. The CPUC determined that the FCC's *ISP Remand Order*

² *AT&T Corp., et al. v. Core Communications, Inc. et al.*, No. 12-7157 (E.D. Pa., Jan. 31, 2014 Memorandum Decision, March 10, 2014 Order) (District Court decision) (Attached as Appendix A to Petition.)

did not apply (as it was traffic exchanged between CLECs rather than between an ILEC and a CLEC), and that Pac-West's intrastate tariffs should apply. AT&T appealed, and the appeal made its way to the U.S. Court of Appeals for the Ninth Circuit. The Ninth Circuit invited the FCC to weigh in on whether its *ISP Remand Order* applied to CLEC-CLEC traffic, and whether, in the absence of an interconnection agreement, the CPUC had jurisdiction to hear a dispute over compensation due one CLEC for the termination of indirectly-exchanged ISP-bound traffic originating with another CLEC.

The FCC filed an *amicus* brief in the *Pac-West* case stating that its *ISP Remand Order* does apply to CLEC-CLEC dial-up ISP-bound traffic. However, the FCC refrained from advising the Ninth Circuit whether a state commission would have jurisdiction to resolve a CLEC-CLEC dispute by applying federal law, stating that “[t]he FCC in its rules and orders has not directly spoken to the issue whether the CPUC would have jurisdiction to resolve this dispute applying federal law and accordingly the FCC in this *amicus* brief takes no position on that issue.”

In its Petition, the Pa. PUC states that its orders relied in part on the Ninth Circuit decision and the FCC's *amicus* brief in the *Pac-West* case. In its orders, the Pa. PUC reasoned that while the FCC has preempted state commissions from setting the rate for the exchange of the traffic at issue in a manner that is inconsistent with the *ISP Remand Order*, the Pa. PUC still retained authority to adjudicate the dispute and apply the federal rate set forth in the *ISP Remand Order*.

III. DISCUSSION

The CPUC supports the Pa. PUC's request for clarification on whether state commissions have authority to resolve disputes between CLECs by applying federal law. Further, the CPUC agrees with the Pa. PUC's recommendation that the FCC confirm that states do in fact already have such authority under their current regulatory power. As discussed below, the CPUC has taken such a position in its orders as well as before federal courts (and indeed, has exercised jurisdiction to hear disputes between CLECs over the termination of indirectly-exchanged ISP-bound traffic originating with another CLEC), and likely will be confronted with challenges to its jurisdiction in future cases. The District Court decision creates regulatory and financial uncertainty and the CPUC concurs with the Pa. PUC's request for the Commission to provide affirmative guidance on the matter.

A. The CPUC Concurs With the Pa. PUC That State Commissions Have Jurisdiction to Adjudicate Disputes Between CLECs, Even When That Traffic Includes Jurisdictionally Interstate Traffic

1. State Commissions Have Jurisdiction Pursuant to Federal Law

The CPUC has taken the position before the Ninth Circuit in the *Pac-West* case, as well as in its orders, that state commissions are given authority to mediate disputes between local carriers, even when this touches on jurisdictionally interstate traffic, and

even where there is no interconnection agreement.¹⁰ Section 251(d)(3) of the Act expressly preserves state commission authority to enforce “access and interconnection obligations of local exchange carriers,” and do so “by regulation, order, or policy,” as long as it is “consistent with the requirements of this section [§ 251]” and “does not substantially prevent implementation of this section and the purposes of this part [‘Development of Competitive Markets,’ §§ 251-61].”

This Commission has found that the Act gives state commissions some flexibility to meet the demands of the rapidly evolving telecommunications market, as well as to exercise their expertise in the local market.¹¹ State commissions have in fact and law become “‘deputized’ federal regulators.”¹² As such, state commissions are given authority to mediate disputes between local carriers, even when this touches on jurisdictionally interstate traffic, and even where Section 252 of the Act (arbitration) is not implicated: the FCC “shall not” preclude any state order that “establishes access and interconnection obligations of local exchange carriers” as long as those are consistent

¹⁰ See, Brief of Appellee CPUC, filed in *Pac-West*, *supra*, at p. 29 (filed Mar. 13, 2009); see also, D.07-01-004 (*Cox Telecom v. Global NAPs*), affirmed *sub nom. Global NAPs v. CPUC*, CV 07-04801 MMM (SSx) (C.D.Cal. 2007), December 23, 2008 Order Granting Summary Judgment. *Cox v. Global NAPs* involved a dispute between two CLECs regarding the termination of traffic (IP-PSTN traffic) alleged to be interstate and beyond the CPUC’s jurisdiction. The Court in that case found nothing in the Act or the FCC’s orders on IP-related traffic to preempt the CPUC’s adjudication of this dispute.

¹¹ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers (Local Competition Order)* (1996), 11 FCC Rcd 15499 ¶¶ 83-85, 41, 53, 58; 47 U.S.C. §§251(d)(3).

¹² *Pacific Bell v. Pac-West Telecomm, Inc.*, 325 F.3d 1114, 1126, n. 10, quoting *MCI Telecomm. Corp. v. Ill. Bell Tel. Co.*, 222 F.3d 323, 344 (7th Cir. 2000).

with the Act.¹³ Furthermore, Sections 261 (b) and (c) of the Act (47 U.S.C. §§ 261(b) and (c)) confirm state commission authority to enforce regulations in effect prior to the Act, and to prescribe regulations thereafter as long as they are not inconsistent with the local competition provisions of the Act.

This Commission has endorsed the 1996 Act’s regulatory scheme of cooperative federalism, in which state law governing local telecommunications and federal law governing interstate telecommunications is implemented and administered by both state regulatory commissions such as the CPUC and the FCC. Indeed, the Commission has held that “the Commission and the states have parallel jurisdiction” under Sections 251 and 252 of the Act.¹⁴ In its *Local Competition Order*, the Commission issued national rules for enforcing and implementing local competition, finding that the Act “expands the applicability of both national rules to historically intrastate issues and state rules to historically interstate issues.”¹⁵ The Commission found that in implementing Section 251 “states should have the major responsibility for prescribing the specific terms and conditions that will lead to competition in local exchange markets.”¹⁶ As the Commission noted in its *Local Competition Order*, “[I]t would make little sense in terms of economics or technology to distinguish between interstate and intrastate components for purposes of Sections 251 and 252.”¹⁷

¹³ 47 U.S.C. § 251(d)(3); *Local Competition Order*, *supra*.

¹⁴ *Local Competition Order*, *supra*, at ¶ 92.

¹⁵ *Id.* at ¶¶ 83-84 (emphasis added).

¹⁶ *Id.* at ¶¶ 41 and 103.

¹⁷ *Id.* at ¶ 84.

Likewise, in its recent *USF/ICC Reform Order*¹⁸, the Commission confirmed the role of state commissions in resolving inter-carrier compensation disputes, including those related to interstate services. For example, the *USF/ICC Reform Order* expanded the scope of Section 251(b)(5) reciprocal compensation to include not only local traffic but also traffic that has traditionally been classified as intrastate and interstate switched access traffic.¹⁹ The Commission held, “when a Local Exchange Carrier is party to the transport and termination of access traffic, the exchange of traffic is subject to regulation under the reciprocal compensation framework.”²⁰ Bringing such traffic into the Section 251(b)(5) reciprocal compensation regime thus gives states the authority to resolve inter-carrier compensation disputes relating to such traffic.

The CPUC agrees with the Pa. PUC that the District Court’s decision runs counter to the regulatory regime set forth in the 1996 Act, as well as Commission orders implementing that Act. Consistent with the discussion above, the CPUC concurs with the Pa. PUC’s view that state commissions in fact do have jurisdiction under federal law to mediate disputes between local carriers, even when this touches on jurisdictionally interstate traffic, and even where there is no interconnection agreement.

¹⁸ *In the Matter of 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 an 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, Report and Order and Further Notice of Proposed Rulemaking, rel. Nov. 18, 2011 (*USF/ICC Transformation Order*).

¹⁹ *Id.*, at ¶¶ 761-762.

²⁰ *Id.*, at ¶ 762.

2. The CPUC Has Authority Under State Law to Adjudicate CLEC-CLEC Disputes

Like the Pa. PUC, the CPUC has jurisdiction under California state law to adjudicate disputes that arise between two CLECs certified to provide local exchange telecommunications services in the state of California.²¹ The CPUC has broad constitutional and statutory authority to regulate public utilities in California, including telecommunications carriers doing business in the state, and including the authority to determine and fix “just, reasonable [and] sufficient rates” charged by utilities.²² The CPUC has the authority over the rules, practices, facilities and equipment of public utilities.²³ The CPUC also has the power to order physical connections between telephone corporations and the payment of compensation for such connections.²⁴ Finally, the CPUC is given broad and expansive jurisdiction to “do all things...necessary or convenient” in the exercise of its jurisdiction to “supervise and regulate every public utility in the State.”²⁵

In addition, the CPUC is statutorily authorized to hear complaints, including between utilities, “setting forth any act or thing done or omitted to be done by any public utility . . . in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission.”²⁶

²¹ Cal. Const., art. XII, §§2-6; Cal. Pub. Util. Code §§ 216, 233, 234, 702, and 728.

²² Cal. Pub. Util. Code §§ 451, 728.

²³ Cal. Pub. Util. Code §§ 451, 761.

²⁴ Cal. Pub. Util. Code § 766.

²⁵ Cal. Pub. Util. Code § 701.

²⁶ Cal. Pub. Util. Code §§ 1702, 1707.

Together these California code sections provide the CPUC with authority to oversee the conduct of telecommunications carriers in California, including issues relating to the interstate charges imposed by one California carrier on other carriers in this state. The CPUC may exercise this authority by adjudicating a complaint proceeding brought by one certificated carrier against another.

Pursuant to this authority too, California and the CPUC were ahead of the curve in seeking to open the local telecommunications market to competition. The California Legislature adopted Assembly Bill 3606 in 1994 (codified at Cal. Pub. Util. Code § 709.2), expressing its intent that the CPUC open telecommunications markets to competition by January 1, 1997. Pursuant to that authority, the CPUC issued a number of decisions opening the local markets to competition: D.94-09-065 (opening local toll markets); D.95-04-043 and -044 (rulemaking and investigation into competition for local exchange service); D.95-07-054 (adopting initial local competition rules) – all predating the Federal 1996 Act.²⁷

In the course of its market-opening decisions, the CPUC has often been called upon to resolve CLEC-CLEC, as well as and ILEC-CLEC disputes, and in this context has reaffirmed the “obligations of telecommunications carriers to complete calls even if underlying inter-carrier arrangements for certain calls do not compensate them in a

²⁷ Such market-opening measures have often touched on interstate traffic. The CPUC has jurisdiction over interstate service providers, *inter alia*, when they violate California’s anti-slamming statute, Cal. Pub. Util. Code § 2889.5 (enacted 1990) (unauthorized transfer of interstate and other telephone services), or its anti-cramming statute, Cal. Pub.Util. Code § 2890 (unauthorized interstate and other telephone charges).

proper manner in the opinion of the carriers.”²⁸ To not adjudicate claims such as those discussed in the Pa. PUC Petition would amount to ceding our jurisdiction to resolve disputes between two CLECs that operate in the state of California. The Pa. PUC states that the District Court decision conflicts with its authority under state law to resolve disputes between two certificated carriers in its state. Although the Pennsylvania District Court’s decision is not binding in California, the CPUC agrees with this assessment that the reasoning therein similarly would conflict with the CPUC’s jurisdiction under state law to adjudicate inter-carrier compensation disputes between CLECs in California.

B. District Court Order Is Inconsistent with FCC’s *Amicus* Brief and the *ISP Remand Order*

The Commission’s *amicus* brief in the *Pac-West* case did not explicitly address the issue of whether state commissions have jurisdiction, acting outside the context of a Section 252 arbitration, to adjudicate a dispute between two CLECs concerning interstate traffic by applying federal legal standards. Specifically, the Commission stated, “to date [the Commission] has not directly spoken to the broader jurisdictional issue in its rules and orders and therefore does not take a position on this issue in this *amicus* brief.”²⁹

The Commission further confirmed that CLEC-CLEC local ISP-bound traffic was within the scope of the *ISP Remand Order* and indicated that “its inter-carrier compensation regime for ISP-bound traffic preempted inconsistent state regulation.”³⁰

Although the Commission in the *ISP Remand Order* concluded that state commissions

²⁸ D.97-11-024, 76 CPUC 2d 458, 458 (1997), citing Cal. Pub. Util. Code § 558.

²⁹ FCC *Amicus* Brief, at 14, 29.

³⁰ FCC *Amicus* Brief, at 10-11, citing *ISP Remand Order* 16 FCC Rcd 9151, 9189 ¶ 82 [citations omitted].

were preempted from establishing a rate for such traffic that was inconsistent with the *Order*, it did not preclude state commissions from resolving compensation disputes over such traffic. Rather, as part of the cooperative federalism scheme, the Commission established a rate-cap that the states enforce but are not permitted to exceed. Specifically, the *ISP Remand Order* states that “[b]ecause the transitional rates are *caps* on inter-carrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps or on a bill and keep basis (or otherwise have not required payment of compensation for this traffic).”³¹ This statement indicates that states had and still have authority to adjudicate inter-carrier compensation claims between two LECs (including two CLECs) for such traffic, as long as they order the exchange of such traffic at rates at or below the caps. Furthermore, the Commission did “not pre-empt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date”³² of the compensation rules, thus also implying that states have had authority to adjudicate disputes between LECs concerning the compensation for ISP-bound traffic.

The CPUC agrees with the Pa. PUC’s assessment that the Commission’s *amicus* brief, as well as the *ISP Remand Order*, implicitly stand for the proposition that prior Commission orders do not establish that, in the absence of an interconnection agreement, state commissions would lack jurisdiction to resolve compensation disputes between LECs over the exchange of interstate traffic. The District Court decision, to the contrary,

³¹ *ISP Remand Order, supra*, at 9156-57 ¶ 8 (emphasis in original).

³² *Id.*, at 9189 ¶ 82.

stated that “the question before the Court is therefore whether the *ISP Remand Order* allows the [Pa. PUC] to address issues of compensation for ISP-bound traffic”³³, and concluded that it does not.³⁴ The District Court decision is at odds with the Commission’s reading of its own orders. For this reason alone, the Commission should clarify its existing orders, and either affirm the District Court’s holding, or issue a new declaratory ruling on the issue.

C. The District Court’s Decision Would Create Untenable and Undesirable Result

The CPUC supports the Pa. PUC’s assessment that the District Court’s Decision results in a two-track system, where state commissions within the Court’s jurisdiction would have to refer all inter-carrier compensation disputes, outside the Section 251/252 process, involving interstate traffic to the Commission for resolution. This result is contrary to long-standing practice where state commissions have adjudicated inter-carrier compensation disputes, both for carriers that have interconnection agreements pursuant to Sections 251/252, and for carriers that exchange traffic indirectly without formal compensation arrangements by applying state tariffs, where appropriate, or by enforcing federally established rates. It is an absurd result, not to mention inconsistent with the principles of cooperative federalism, to have state commissions adjudicate a claim for ISP-bound traffic only if it arises in the context of a Section 252 arbitration (which is typically between an ILEC and a CLEC), and to deny the same ability to provide relief to two CLECs that indirectly exchange the same type of traffic. Such a result is also

³³ District Court decision, *mimeo*, at 24 (Attached as Appendix A to Petition).

³⁴ *Id.*, at 26.

undesirable as it would be administratively burdensome and expensive, not only for the Commission, but for the LECs that would be required to seek relief at the federal level rather than at their respective state commissions. State commissions too would be burdened by having to perform the exercise of parsing out exactly which claims involve jurisdictionally interstate traffic (an especially arduous task if the traffic is jurisdictionally mixed) and referring those claims to the FCC for resolution.

Finally, this result would be burdensome for the Commission itself, which would be required to adjudicate dozens or potentially scores of intercarrier disputes. The line of carriers seeking redress would be long, as would the wait for resolution when only one agency could hear all such disputes.

Because of the financial and regulatory uncertainty the District Court's decision has created, not only for affected carriers but also for state commissions in determining their adjudicatory role in these types of disputes, the CPUC supports the Pa. PUC's Petition for a declaratory order.

D. The Commission Should Provide Guidance On This Issue As State Commissions Consistently Face Challenges to Their Jurisdiction to Resolve Inter-carrier Compensation Disputes Between Carriers.

The CPUC welcomes a declaratory ruling from the Commission on this issue as the CPUC anticipates future challenges to its jurisdiction to resolve disputes over inter-carrier compensation between LECs involving interstate traffic. As discussed above, the Ninth Circuit left this issue unresolved. Indeed, such jurisdictional challenges are not limited to indirect CLEC-CLEC exchange of traffic. The CPUC is currently

facing a dispute where, despite the fact that the carriers have entered into an interconnection agreement, an ILEC is challenging the CPUC's jurisdiction to resolve the complaint over interstate switched access charges. Specifically, Verizon CA is claiming that the FCC has exclusive jurisdiction over interstate switched access service and state public utilities commissions, including the CPUC, have no jurisdiction to adjudicate claims regarding federally tariffed interstate switched access charges.³⁵

The CPUC disagreed with Verizon CA's assertion, finding that the Act, through cooperative federalism, established a division of responsibility between states and the federal government that delegated to state commissions, in the first instance, the job of resolving such inter-carrier disputes. In particular, the CPUC found that the Act placed responsibility for interpreting interconnection agreements between carriers on the state commissions, and recently issued a scoping memo setting out its authority to hear the matter.³⁶ Nonetheless, Verizon CA has filed a complaint in federal district court for its claims of inter-carrier compensation due from the CLEC for the transport and termination of various types of traffic, including jurisdictionally interstate traffic.³⁷ That case has been stayed pursuant to a stipulation by the parties until a final, appealable decision is issued in the action currently pending before the CPUC.

³⁵ *O1 Communications Inc. v. Verizon Communications, Inc., et al.*, Case No. C.13-04-008 (filed April 11, 2013) (*O1 v. Verizon*).

³⁶ *See*, Scoping Memo and Ruling of Administrative Law Judge and Assigned Commissioner in *O1 v. Verizon*, (filed May 5, 2014).

³⁷ *Verizon California, Inc. v. O1 Communications, Inc.*, Case No. 2:13-cv-07869-PSG-VBK (C.D. Cal.) (Complaint filed Oct. 24, 2013). The CPUC is not a party to this action.

Although the CPUC finds that its jurisdiction to resolve this dispute is firmly grounded in state and federal law, we nonetheless welcome the FCC’s guidance on the issues the Pa. PUC’s Petition raises. In particular, the CPUC agrees with the Pa. PUC that the Commission should provide “affirmative guidance on whether state commissions retain jurisdiction to deal with matters arising from the exchange of traffic between directly and indirectly interconnected carriers”, including – but not limited to – inter-carrier compensation disputes involving local ISP-bound traffic, through the proper application of federal and state law.³⁸

IV. CONCLUSION

The CPUC supports the Commission’s granting the Pa. PUC’s Petition for Declaratory Order on whether state public utility commissions are entitled to adjudicate inter-carrier compensation disputes involving the exchange of local dial-up Internet traffic between carriers with indirect interconnection. Consistent with the discussion above, the CPUC recommends that the Commission find that state commissions do in fact retain such jurisdiction. In the alternative, the CPUC supports the Pa. PUC’s request

³⁸ Petition at 4-5.

that the Commission set forth the applicable procedures for transferring such cases to the Commission for resolution. We thank the Commission for the opportunity to comment on this matter.

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