**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, Pennsylvania 17105-3265**

Public Meeting held March 15, 2012

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner

James H. Cawley

Pamela A. Witmer

Implementation of the Federal Communications M-2012-2291824

Commission’s Order of November 18, 2011

As Amended Or Revised And Coordination

With Certain Intrastate Matters

**OPINION AND ORDER**

**BY THE COMMISSION:**

The recent decision by the Federal Communications Commission (FCC) in *In re Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, FCC 11-161 (November 18, 2011) (*FCC Order*), which promulgated a series of changes and reforms in the federal universal service fund (USF) mechanism and in various parameters of interstate and intrastate intercarrier compensation, interacts with and materially affects rulings that this Commission already has rendered in certain adjudications and their subsequent implementation. Although the *FCC Order* has been appealed, it has not been stayed, and it triggers a series of compliance obligations and associated deadlines that involve both regulated telecommunications carriers and State utility commissions. This Commission, therefore, must take appropriate actions to synchronize and properly coordinate some of our own rulings and pending matters with the intrastate implementation of the *FCC Order*.

In a separate Opinion and Order, which we also adopted today, we have reopened the record in our recently-concluded *RLEC Access Charge Investigation[[1]](#footnote-1)* for the limited purpose of examining the cross-effects of the *FCC Order* on our *July 18, 2011 Order* in that proceeding. By the instant Opinion and Order, we are opening a separate proceeding to address other issues related to the implementation of the *FCC Order* and its prospective effect on various intrastate matters. As part of this new proceeding, we shall convene an on-the-record collaborative workshop session before an Administrative Law Judge to be held on April 20, 2012, in Hearing Room 1 of the Commonwealth Keystone Building in Harrisburg, Pennsylvania at a time to be announced.

**Discussion**

The implementation of the *FCC Order* will entail a series of activities and tasks that need to be performed by this Commission. Of critical importance are the upcoming intrastate intercarrier compensation reforms that the FCC has directed to be implemented on July 1, 2012. This Commission and other State utility regulatory agencies maintain certain oversight and enforcement duties over the future submissions of intrastate carrier access tariffs that will implement these reforms. Such duties potentially include the policing of carrier actions so that their implementation of the FCC’s directives does not “enable a windfall and/or double recovery” and ensures “consistency with the uniform [FCC Order] framework.” *FCC Order*, ¶ 813, at 277. Naturally, the filing of the contemplated intrastate carrier access tariffs needs to be coordinated with the corresponding transitional use by the affected carriers of the federal Eligible Recovery mechanism inclusive of the new federal Access Recovery Charge (ARC) and the potential availability and utilization of support from the federal Connect America Fund (CAF).

The particular mechanics of implementing many aspects of the *FCC Order* are still in flux. For example, the FCC has permitted “carriers to determine at the holding company level how Eligible Recovery will be allocated among their incumbent LECs’ ARCs” and found that by “providing this flexibility, carriers will be able to spread the recovery of Eligible Recovery among a broader set of customers, minimizing the increase experienced by any one [wireline end-user] customer.” *FCC Order*, ¶ 910, at 327. This provision is the subject of a Petition for Reconsideration filed by the Public Service Commission of the District of Columbia (DC PSC) that currently is pending before the FCC. Multi-state allocations of Eligible Recovery are not favorably viewed by the DC PSC and other State utility commissions in light of the fact that the wireline end-user consumers of a particular jurisdiction potentially can be disadvantaged by this type of recovery.

For these reasons, we are of the opinion that it is appropriate to open a proceeding to afford all interested stakeholders with the opportunity to present appropriate information and material regarding this Commission’s implementation of the FCC’s directives well in advance of the carrier access tariff submissions that will put in place the intercarrier compensation reforms mandated by the FCC. As part of this proceeding, we shall convene an on-the-record collaborative workshop session on April 20, 2012, where stakeholders will be invited to provide recommendations to the Commission regarding the implementation of the *FCC Order*. The presentations of the interested and participating parties should at a minimum address the following areas:

1. The appropriate legal boundaries of the Commission’s authority and jurisdiction to exercise appropriate oversight and enforcement while implementing the FCC’s directives including but not limited to:
2. Requiring the timely submission of the proposed tariffs and supporting data demonstrating that the FCC-mandated intercarrier compensation reforms comply with the FCC’s directives and do not lead to a potential “windfall and/or double recovery” if and when a carrier also utilizes the federal Eligible Recovery mechanism inclusive of the ARC and CAF support.
3. Requiring the timely submission of the necessary assurances, jurisdictional allocations and accompanying data by incumbent local exchange carriers (ILECs) that are subsidiaries or affiliates of holding companies demonstrating that the federal Eligible Recovery amounts at issue arising from their interstate and intrastate carrier access services are properly allocated or otherwise attributed to their Pennsylvania operations and do not include any cross-jurisdictional amounts.
4. Monitoring any broadband deployment requirements under the *FCC Order* standards where the relevant obligation may have been triggered by a federal price cap utilization of federal Eligible Recovery and CAF intercarrier compensation support.
5. Appropriate and demonstrative methods and quantitative examples of the following:
6. How carriers will determine the federal Eligible Recovery amounts inclusive of the ARC and CAF support. This information should be provided in a disaggregated fashion for the relevant components (ARC versus CAF support), and for the applicable time frames when such support components will be recovered or otherwise utilized. This information also should be provided based on the appropriate ILEC classifications, e.g., federal price cap and rate-of-return (ROR) ILECs, while also taking into account the existing ILEC basic residential local exchange service rates vis-à-vis the FCC’s Residential Rate Ceiling.
7. How, within specific and applicable time frames, carriers will properly document and verify the reconciliation between the access reforms contemplated in the *FCC Order* and the utilization of the federal Eligible Recovery mechanism inclusive of the ARC and CAF support. This information also should be provided based on the appropriate ILEC classifications, e.g., federal price cap and ROR ILECs, while also taking into account the existing ILEC basic residential local exchange service rates vis-à-vis the FCC’s Residential Rate Ceiling.
8. The potential modifications that will be required in existing interconnection agreements in order to timely effectuate the FCC’s directives on intercarrier compensation where such interconnection agreements also involve wireline and wireless carriers.[[2]](#footnote-2)
9. Whether individual federal price cap ILECs operating in Pennsylvania will be utilizing Eligible Recovery and CAF intercarrier compensation support with the concurrent accrual of broadband deployment obligations under the *FCC Order* standards.
10. The use of properly designed informal dispute resolution processes with or without the involvement of Commission Staff for addressing such areas as:
11. The verification of intrastate intercarrier compensation rates and amounts.
12. Intercarrier compensation disputes that may arise within or outside the context of interconnection agreements and where such disputes may involve both direct and indirect interconnection.

Stakeholders who wish to request the opportunity to make a presentation at the collaborative session are directed to contact the Commission’s FCC Order Task Force[[3]](#footnote-3) on or before April 6, 2012, at [RA-PUCTelco@pa.gov](mailto:RA-PUCTelco@pa.gov), and provide the name and title of the person who would be presenting on behalf of the stakeholder, along with the a brief summary of the topic(s) that will be covered. After that date, the Commission’s FCC Order Task Force will organize representative panels among those stakeholders that have selected to make presentations, and will post an agenda and other information concerning the collaborative session on the Commission’s website at: http://www.puc.state.pa.us/telecom/FCC\_Implementation\_Order.aspx.

All stakeholders, including those that are selected to participate in panel presentations at the collaborative session, are invited to submit detailed information and material to the Commission as outlined in this Opinion and Order.

The Office of Administrative Law Judge will simply preside over the collaborative session. Following the collaborative session, we shall assess the information that has been submitted by interested parties and determine what further actions by this Commission may be necessary to implement the FCC’s directives.

**Conclusion**

For the reasons in the foregoing discussion, we shall convene an on-the-record collaborative workshop session on April 20, 2012, where interested stakeholders will be afforded the opportunity to present recommendations regarding this Commission’s implementation of the *FCC Order*; **THEREFORE,**

**IT IS ORDERED:**

1. That an on-the-record collaborative session shall be convened on April 20, 2012, for the purpose of facilitating discussion and soliciting comments, presentations and recommendations from interested stakeholders regarding this Commission’s implementation of the recent decision by the FCC in *In re Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, FCC 11-161 (November 18, 2011).

2. That the Office of Administrative Judge shall assign an Administrative Law Judge to preside over the April 20, 2012 on-the-record collaborative session, to be held in Hearing Room 1 of the Commonwealth Keystone Building, Harrisburg, Pennsylvania, at a time to be announced. Requests to make presentations at the collaborative session must be submitted on or before April 6, 2012, to the Commission’s FCC Order Task Force at [RA-PUCTelco@pa.gov](mailto:RA-PUCTelco@pa.gov). Stakeholders requesting the opportunity to make a presentation shall provide the name and title of the person who would be presenting on behalf of the stakeholder, along with a brief summary of the topics that would be covered. An agenda and further information about the collaborative session will be posted by April 13, 2012, on the Commission’s website at the FCC Order Task Force web page at: <http://www.puc.state.pa.us/telecom/FCC_Implementation_Order.aspx>.

3. That the deadline for submitting the information and material requested by this Opinion and Order is April 11, 2012. Stakeholders shall file an original and five copies with the Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3264. In addition, an electronic copy of the information and material shall be submitted to the Commission’s FCC Order Task Force at [RA-PUCTelco@pa.gov](mailto:RA-PUCTelco@pa.gov).

4. That following the collaborative session, the record will be certified to the Commission and assigned to the FCC Order Task Force for the purpose of preparing a recommendation to the Commission regarding what further steps may need to be taken to implement the directives in the Federal Communication Commission’s recent decision in *In re Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, FCC 11-161 (November 18, 2011).

5. That this Opinion and Order be served on all Incumbent Local Exchange Carriers, Competitive Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Interexchange Resellers, the Pennsylvania Telephone Association, the Broadband Cable Association of Pennsylvania, the Office of Consumer Advocate, and the Office of Small Business Advocate. In addition, this Opinion and Order shall be posted on the Commission’s website.



**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: March 15, 2012

ORDER ENTERED: March 22, 2012

1. *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund et al.*, Docket No. I‑00040105, C-2009-2098380, *et al*. (Order entered July 18, 2011) (*July 18, 2011 Order)*. [↑](#footnote-ref-1)
2. FCC Order on Reconsideration, WC Docket No. 10-90 *et al.*, December 23, 2011. [↑](#footnote-ref-2)
3. The FCC Order Task Force is an *ad hoc* task force comprised of staff from the Commission’s Law Bureau, Office of Special Assistants, Bureau of Technical Utility Services, Bureau of Consumer Services and the Executive Office that recently was formed to provide advice to the Commission and coordinate related activities regarding the implementation of the *FCC Order*. [↑](#footnote-ref-3)