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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | | |  | |
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|  | | Public Meeting held April 21, 2016 | | | |
| Commissioners Present: | |  | | | |
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| Gladys M. Brown, Chairman  Andrew G. Place, Vice Chairman  Pamela A. Witmer  John F. Coleman, Jr.  Robert F. Powelson | | | | |  |
|  | | | | |  |
| Implementation of the Federal Communications Commission’s Order of November 18, 2011 as Amended or Revised and Coordination with Certain Intrastate Matters | | | M-2012-2291824 | | |

**ORDER**

**BY THE COMMISSION:**

In accordance with our previous Orders entered on March 22, 2012,[[1]](#footnote-1) May 10, 2012,[[2]](#footnote-2) April 18, 2013,[[3]](#footnote-3) April 23, 2014,[[4]](#footnote-4) and April 23, 2015,[[5]](#footnote-5) in this proceeding, this Commission is continuing with the implementation of the substantial changes to the intercarrier compensation regime ordered by the Federal Communications Commission (FCC) in its decision, *In re: Connect America Fund,* Docket No. 10-90, *et.al*.[[6]](#footnote-6) The *FCC Order* triggers a series of compliance obligations and associated deadlines that involve both regulated telecommunications carriers and state utility commissions.

**BACKGROUND**

The *FCC Order, inter alia,* directs a multiyear transition from current intrastate switched access rates to initial parity with federal interstate switched access rates for terminating traffic, and a subsequent movement to bill-and-keep. At the outset of this transition, the FCC required incumbent local exchange carriers (ILECs) classified as price cap carriers at the federal level to cap the intrastate access rate elements referenced in 47 C.F.R § 51.907 at their levels in effect December 29, 2011. Similarly, ILECs classified as rate-of-return (ROR) carriers at the federal level were required to cap, at the levels in effect December 29, 2011, the intrastate access rate elements referenced in 47 C.F.R § 51.909.[[7]](#footnote-7)

Subsequently, the *FCC Order* directs a multiyear process under which ILECs are to make filings effective July 1 of each year to transition gradually certain interstate and intrastate access rates to bill-and-keep. The intrastate access rate reductions apply to Transitional Intrastate Access Services (TIAS) as defined in 47 C.F.R. § 51.903(j). A generally corresponding transition is also contemplated for the intrastate switched access rates of competitive local exchange carriers (CLECs) in accordance with the FCC’s benchmarking rule.[[8]](#footnote-8)

Through our March 22, 2012 Order, the Commission initiated its FCC Order Implementation proceeding. The Commission invited comments on the implementation of the *FCC Order* and conducted an on-the-record technical collaborative session on April 20, 2012.

Subsequently, through our May 10, 2012 Order, the Commission entered a Consolidated Short Form and Protective Order addressing, *inter alia*, implementation of Step 1[[9]](#footnote-9) of the transition of the intrastate intercarrier compensation regime to bill-and-keep as contemplated by the *FCC Order*. Through our April 18, 2013 Order, we addressed the implementation of Step 2[[10]](#footnote-10) of that transition. Our April 23, 2014 Order addressed the implementation of Step 3[[11]](#footnote-11) of that transition. Our April 23, 2015 Order addressed the implementation of Step 4[[12]](#footnote-12) of that transition. In this Order, we address the implementation of Step 5 of that transition.[[13]](#footnote-13)

**DISCUSSION**

The importance of state utility commission involvement and oversight in the intercarrier compensation reform process was specifically recognized by the FCC:

Because carriers will be revising intrastate access tariffs to reduce rates for certain terminating switched access rate elements, and capping other intrastate rates, states will play a critical role implementing and enforcing intercarrier compensation reforms. In particular, state oversight of the transition process is necessary to ensure that carriers comply with the transition timing and intrastate access charge reductions outlined above. Under our framework, rates for intrastate access traffic will remain in intrastate tariffs. As a result, to ensure compliance with the framework and to ensure carriers are not taking actions that could enable a windfall and/or double recovery, state commissions should monitor compliance with our rate transition; review how carriers reduce rates to ensure consistency with the uniform framework; and guard against attempts to raise capped intercarrier compensation rates, as well as unanticipated types of gamesmanship. Consistent with states’ existing authority, therefore, states could require carriers to provide additional information and/or refile intrastate access tariffs that do not follow the framework or rules adopted in this Order. Moreover, state commissions will continue to review and approve interconnection agreements and associated reciprocal compensation rates to ensure that they are consistent with the new federal framework and transition. Thus, we will be working in partnership with states to monitor carriers’ compliance with our rules, thereby ensuring that consumers throughout the country will realize the tremendous benefits of ICC reform.[[14]](#footnote-14)

**Step 5 Access Charge Revisions and Supporting Information**

Unlike the Step 1and Step 2 access charge revisions, which applied to all TIAS, Step 3, Step 4 and Step 5 apply only to rates for terminating elements within End Office Access Service as defined in 47 C.F.R. § 51.903(d). Thus, Tandem and Transport rates are maintained at their Step 2 parity rates.

For Step 5, federal price cap ILECs are to establish interstate and intrastate per minute terminating End Office Access Service rates such that its Composite Terminating End Office Access Service rate does not exceed $0.0007 per minute. Federal ROR ILECs are to establish interstate and intrastate per minute terminating End Office Access Service rates such that its Composite Terminating End Office Access Service rate does not exceed $0.005 per minute.

On March 31, 2014, the FCC released an order that, *inter alia,* clarified the methodologies for determining compliance with the Step 5 access charge revisions.[[15]](#footnote-15) For price cap ILECs, compliance is determined by calculating interstate Composite Terminating End Office Access Rates using the relevant Fiscal Year 2011 interstate demand multiplied by the respective interstate rates as of July 1, 2016, and then dividing the results by the relevant 2011 Fiscal Year interstate terminating local switching demand.[[16]](#footnote-16) For ROR ILECs, compliance is determined by calculating interstate Composite Terminating End Office Access Rates using the relevant projected interstate demand for the tariff period multiplied by the respective interstate rates as of July 1, 2016, and then dividing by the projected interstate terminating end office local switching demand for the tariff period.[[17]](#footnote-17)

As with Step 3 and Step 4, ILECs do have some flexibility in their Step 5 rate development to ensure, on a composite basis, that their Composite Terminating End Office Access Service rates fall at or below $0.0007 per minute of use (MOU) for price cap ILECs and $0.005 per MOU for ROR ILECs. Indeed, the *FCC Order* allows ILECs an option of implementing a single per-minute rate element for terminating End Office Access Service no greater than $0.0007 for price cap ILECs and $0.005 for ROR ILECs.

We note that the *March 31 FCC Order* clarified that, beginning in 2014, interstate/intrastate rate parity is to be maintained during the transition of terminating end office access rates to bill-and-keep. Further, this parity is to be maintained between interstate and intrastate rates themselves, not just interstate and intrastate composite rates.[[18]](#footnote-18) Thus, the Step 5 interstate and intrastate access charge revisions should be identical. The only exception being if an ILEC’s intrastate rates are already lower than its functionally equivalent interstate rates, in which case, pursuant to 47 C.F.R § 51.907(e)(2) and 47 C.F.R. § 51.909(e)(1)(ii), ILECs are proscribed from making any intrastate tariff filing or revision to increase such rates.

All ILEC tariff submissions must be accompanied by supporting information that demonstrates that the filed rates for Terminating End Office Access Service result in a Composite Terminating End Office Access Service rate that is at or below $0.0007 per minute for price cap ILECs and $0.005 per minute for ROR ILECs in accordance with the appropriate FCC-prescribed methodology.

On March 16, 2016, the FCC released an order that, *inter alia,* established procedures and dates for the 2016 filing of annual access charge tariffs.[[19]](#footnote-19) The FCC requires Local Exchange Carriers to file an annual Access Reduction Tariff Review Plan (TRP) with each rate reduction tariff filing. Based on past practice, we expect the FCC will require the TRP for the 2016 access charge revisions to include supporting calculations. Consequently, ILECs may utilize their respective TRPs as supporting information for their intrastate Step 5 access charge revisions submitted to this Commission.

Pursuant to 47 C.F.R. § 51.911(c), all CLEC Access Reciprocal Compensation rates for switched exchange access service shall be no higher than the Access Reciprocal Compensation rates charged by the competing ILEC, in accordance with the same procedures specified in 47 C.F.R. § 61.26. Therefore, all CLECs having switched access tariffs are also to file Step 5 access charge revisions. CLECs may reference the Step 5 access charge revision filing of the underlying ILEC(s) as supporting information for the rates included in their filings. Any CLEC utilizing blended rates must include supporting documentation demonstrating that its blended rates are at or below the Composite Terminating End Office Access Rate of the underlying ILEC(s).

**Timing and Process for Filing Tariffs**

Pursuant to the *FCC Order*, effective July 1, 2016, Composite Terminating End Office Access Rate shall conform to the requirements set forth in 47 C.F.R. § 51.907(f) for federal price cap ILECs, 47 C.F.R § 51.909(f) for federal ROR ILECs and § 51.911(c) for CLECs. All ILECs and those CLECs having switched access tariffs are required to file tariff supplements and supporting information demonstrating their compliance with the Step 5 access charge revisions. In order to meet the FCC’s July 1, 2016 deadline, we shall require carriers to file their tariff supplements and supporting information according to the following schedule:

* All ILECs shall file with the Commission tariff supplements and supporting information implementing the Step 5 access charge revisions as contemplated by the *FCC Order* no later than May 16, 2016.
* All CLECs shall file with the Commission tariff supplements and supporting information implementing the Step 5 access charge revisions as contemplated by the *FCC Order* no later than June 1, 2016.
* All ILECs and CLECs filing these tariff supplements will clearly delineate the total annual amounts of their respective intrastate carrier access charge reductions in the supporting information and data.

LECs may opt to, in accordance with Commission rules, eFile their tariff supplements and supporting information. Information regarding eFiling is available on the Commission’s website at <http://www.puc.pa.gov/efiling/default.aspx>.

In addition to eFiling or submitting hard copies of their filings to the Commission’s Secretary’s Bureau, all LECs must send electronic copies of the supporting information to [RA-PUCTelco@pa.gov](mailto:RA-PUCTelco@pa.gov).

In addition, we encourage ILECs and CLECs that operate under this Commission’s jurisdiction and that directly or indirectly exchange switched access traffic with other telecommunications carriers or other communications entities, to engage in appropriate informal consultations, information exchange, and resolution regarding any issue that may arise following the submission of the required tariffs. Such informal consultations and information exchange can be carried out under the appropriate confidentiality protections of proprietary data and can lead to the avoidance of costly formal complaint litigation before the Commission.

**CONCLUSION**

The Step 5 access charge revisions are a mandated action outlined by the FCC. All ILECs and those CLECs having switched access tariffs are directed to file tariff supplements implementing the Step 5 access charge revisions as contemplated by the *FCC Order* along with supporting information according to the procedures set forth in this Order, **THEREFORE;**

**IT IS ORDERED:**

1. That all Incumbent Local Exchange Carriers must file tariff supplements and supporting information implementing Step 5 of the intrastate access charge revisions as contemplated by the *FCC Order* by May 16, 2016, and the directives of this Order.

2. That all Competitive Local Exchange Carriers having switched access tariffs must file tariff supplements and supporting information implementing Step 5 of the intrastate access charge revisions as contemplated by the *FCC Order* by June 1, 2016, and the directives of this Order.

3. That the failure to file the required tariff supplements and supporting information may result in the imposition of civil penalties of up to $1,000 per violation per day payable to the Commonwealth of Pennsylvania, in accordance with 66 Pa. C.S. § 3301(a) and (b).

4. That this Order be served on all Incumbent Local Exchange Carriers, those Competitive Local Exchange Carriers having switched access tariffs, 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 Order shall be posted on the Commission’s website.

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**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 21, 2016

ORDER ENTERED: April 21, 2016

1. *Implementation of the Federal Communications Commission’s Order of November 18, 2011 as Amended or Revised and Coordination with Certain Intrastate Matters*, Docket No. M-2012-2291824 (Order entered March 22, 2012) (hereinafter “March 22, 2012 Order”). [↑](#footnote-ref-1)
2. *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund*, Docket No. I-00040105; *AT&T Communications of Pennsylvania, et al. v. Armstrong Telephone Company-Pennsylvania, et al.*, Docket No. C-2009-2098380, *et al.*; *Implementation of the Federal Communications Commission’s Order of November 18, 2011 as Amended or Revised and Coordination with Certain Intrastate Matters*, Docket No. M-2012-2291824 (Order entered May 10, 2012) (hereinafter “May 10, 2012 Order”). [↑](#footnote-ref-2)
3. *Implementation of the Federal Communications Commission’s Order of November 18, 2011 as Amended or Revised and Coordination with Certain Intrastate Matters*, Docket No. M-2012-2291824 (Orders entered April 18, 2013 (hereinafter “April 18, 2013 Order”), April 23, 2014 (hereinafter “April 23, 2014 Order”) and April 23, 2015 (hereinafter “April 23, 2015 Order”). [↑](#footnote-ref-3)
4. *Id*. [↑](#footnote-ref-4)
5. *Id*. [↑](#footnote-ref-5)
6. *See* *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18149, para. 1404 (2011), (hereinafter “*FCC Order”*)*, pets. for review denied sub nom. In re: FCC 11-161,* 753 F.3d 1015 (10th Cir. 2014), *cert. denied*, 83 U.S.L.W. 3835, May 4, 2015 (Nos. 14‑610 *et al.*). [↑](#footnote-ref-6)
7. *FCC Order* ¶ 801, 26 FCC Rcd 17934, *slip op.* at 271. 47 C.F.R. § 51.907(a) and § 51.909(a). [↑](#footnote-ref-7)
8. *FCC Order* ¶¶ 801, 807, 26 FCC Rcd 17934, 17938, *slip op.* at 271, 274. 47 C.F.R § 51.911. [↑](#footnote-ref-8)
9. 47 C.F.R. § 51.907(b), § 51.909(b) and § 51.911(b). [↑](#footnote-ref-9)
10. 47 C.F.R. § 51.907(c), § 51.909(c) and § 51.911(c). [↑](#footnote-ref-10)
11. 47 C.F.R. § 51.907(d), § 51.909(d) and § 51.911(c). [↑](#footnote-ref-11)
12. 47 C.F.R. § 51.907(e), § 51.909(e) and § 51.911(c). [↑](#footnote-ref-12)
13. 47 C.F.R. § 51.907(f), § 51.909(f) and § 51.911(c). [↑](#footnote-ref-13)
14. *FCC Order* ¶ 813, 26 FCC Rcd 17940, *slip op.* at 277 (footnotes omitted). *See also* ¶ 803 and ¶ 880, 26 FCC Rcd 17936, 17971, *slip op.* at 273, 308. [↑](#footnote-ref-14)
15. *See* *FCC Order* adopted March 31, 2014, and released March 31, 2014. *In the Matter of Connect America Fund*, WC Docket No. 10-90 and *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (hereinafter “*March 31 FCC Order”*). [↑](#footnote-ref-15)
16. *Id.* at 12. [↑](#footnote-ref-16)
17. *Id.* at 14. [↑](#footnote-ref-17)
18. *Id.* at 3. [↑](#footnote-ref-18)
19. *See FCC Order* released March 16, 2016. *In the Matter of July 1, 2016 Annual Access Charge Tariff Filings,* WC Docket No. 16-71. *See also In re Material to be filed in Support of 2016 Annual Access Tariff Filings*, WC Docket No. 16-71, (FCC, Rel. April 13, 2016), Order, DA 16-399. [↑](#footnote-ref-19)