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|  | **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17105-3265** |  |

Public Meeting held April 23, 2015

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

James H. Cawley

Pamela A. Witmer

Gladys M. Brown

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| 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) and April 23, 2014[[4]](#footnote-4) 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.[[5]](#footnote-5) We again note that 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.[[6]](#footnote-6) The Commission’s decisions made in the implementation of the *FCC Order* are without prejudice to any subsequent litigation involving the *FCC Order*.[[7]](#footnote-7)

**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, 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.[[8]](#footnote-8)

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.[[9]](#footnote-9)

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[[10]](#footnote-10) 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[[11]](#footnote-11) of that transition. Our April 23, 2014 Order addressed the implementation of Step 3[[12]](#footnote-12) of that transition. In this Order, we address the implementation of Step 4 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 4 Access Charge Revisions and Supporting Information**

Unlike the Step 1 and Step 2 access charge revisions, which applied to all TIAS, Step 3 and Step 4 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.

In Step 3, ILECs established separate originating and terminating rate elements for all per-minute components within interstate and intrastate End Office Access Service. The rates for fixed charges were divided between originating and terminating rate elements based on relative originating and terminating end office switching minutes. If sufficient originating and terminating end office switching minute data is unavailable, ILECs were to divide such charges equally between originating and terminating elements.

ILECs then calculated a 2011 Baseline Composite Terminating End Office Access Service Rate (2011 Baseline Rate). On March 31, 2014, the FCC released an order that, *inter alia,* clarified the methodologies for calculating both the 2011 Baseline Rate for both price cap and ROR ILECs.[[15]](#footnote-15) The 2011 Baseline Rate for both price cap and ROR ILECs was calculated by multiplying the Composite Terminating End Office Access Rate calculated using Fiscal Year 2011 interstate demand by the interstate End Office Access Service rates at the levels in effect on December 29, 2011, and then dividing the result by 2011 Fiscal Year interstate local switching demand.

For Step 4, ILECs are to calculate a 2015 Target Composite Terminating End Office Access Rate (2015 Target Rate). The methodology for calculating the 2015 Target Rate is different for price cap and ROR ILECs. For price cap ILECs, the 2015 Target Rate is $0.0007 per minute plus one-third of any difference between the 2011 Baseline Rate and $0.0007 per minute. For ROR ILECs, the 2015 Target Rate is $0.005 per minute plus one-third of the difference between the 2011 Baseline Rate and $0.005 per minute.

Effective July 1, 2015, no ILEC’s interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2015 Target Rate.

As with Step 3, ILECs do have some flexibility in their Step 4 rate development to ensure, on a composite basis, that their Composite Terminating End Office Access Service rates fall at or below the 2015 Target Rate. 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 the 2015 Target Rate.

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.[[16]](#footnote-16) Thus, the Step 4 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 shows how the 2011 Baseline Rate and 2015 Target Rate were developed and demonstrates that the filed rates for Terminating End Office Access Service are at or below the 2015 Target Rate. On March 27, 2015, the FCC released an order that, *inter alia,* established procedures and dates for the 2015 filing of annual access charge tariffs.[[17]](#footnote-17) The FCC requires LECs 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 2015 access charge revisions to include supporting calculations. Consequently, ILECs may utilize their TRP as supporting information for their intrastate Step 4 access charge revisions.

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 4 access charge revisions. CLECs may reference the Step 4 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, 2015, Composite Terminating End Office Access Rate shall conform to the requirements set forth in 47 C.F.R. § 51.907(e) for federal price cap ILECs, 47 C.F.R § 51.909(e) 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 4 access charge revisions. In order to meet the FCC’s July 1, 2015 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 4 access charge revisions as contemplated by the *FCC Order* no later than May 18, 2015.
* All CLECs shall file with the Commission tariff supplements and supporting information implementing the Step 4 access charge revisions as contemplated by the *FCC Order* no later than June 1, 2015.
* 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.

In addition, we encourage ILECs and CLECs that operate under this Commission’s jurisdiction and 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 4 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 4 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 4 of the intrastate access charge revisions as contemplated by the *FCC Order* by May 18, 2015.

2. That all Competitive Local Exchange Carriers having switched access tariffs must file tariff supplements and supporting information implementing Step 4 of the intrastate access charge revisions as contemplated by the *FCC Order* by June 1, 2015, 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.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 23, 2015

ORDER ENTERED: April 23, 2015

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) (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) (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 (Order entered April 18, 2013) (April 18, 2013 Order). [↑](#footnote-ref-3)
4. *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 April 23, 2014) (April 23, 2014 Order). [↑](#footnote-ref-4)
5. See *FCC Order* adopted October 27, 2011, and released November 18, 2011. *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 a 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, (FCC, Rel. Nov. 18, 2011), Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), *slip op.* FCC 11-161. The FCC has issued additional reconsideration and clarification Orders in the same proceeding and the issuance of further such FCC rulings is anticipated (collectively *FCC Order*). [↑](#footnote-ref-5)
6. March 22, 2012 Order at 1. [↑](#footnote-ref-6)
7. We note that the *FCC Order* was affirmed by the U.S. Court of Appeals for the 10th Circuit and petitions for certiorari are currently pending before the U.S. Supreme Court. *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *reh’g denied*, *petitions for certiorari pending National Association of Regulatory Utility Commissioners, et al. v. FCC*, S.Ct. No. 14-901, *et al.* [↑](#footnote-ref-7)
8. *FCC Order* ¶ 801, 26 FCC Rcd 17934, *slip op.* at 271. 47 C.F.R. § 51.907(a) and § 51.909(a). [↑](#footnote-ref-8)
9. *FCC Order* ¶¶ 801, 807, 26 FCC Rcd 17934, 17938, *slip op.* at 271, 274. 47 C.F.R § 51.911. [↑](#footnote-ref-9)
10. 47 C.F.R. § 51.907(b), § 51.909(b) and § 51.911(b). [↑](#footnote-ref-10)
11. 47 C.F.R. § 51.907(c), § 51.909(c) and § 51.911(c). [↑](#footnote-ref-11)
12. 47 C.F.R. § 51.907(d), § 51.909(d) and § 51.911(c). [↑](#footnote-ref-12)
13. 47 C.F.R. § 51.907(e), § 51.909(e) 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 (*March 31 FCC Order*). [↑](#footnote-ref-15)
16. *March 31 FCC Order* ¶ 5 at 3. [↑](#footnote-ref-16)
17. See *FCC Order* released March 27, 2015. *In the Matter of July 1, 2015 Annual Access Charge Tariff Filings,* WC Docket No. 15-75 (*March 27 FCC Order*). [↑](#footnote-ref-17)