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

Public Meeting held April 18, 2013

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner

James H. Cawley

Pamela A. Witmer

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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 |

**PROCEDURAL AND PROTECTIVE ORDER**

**BY THE COMMISSION:**

In accordance with our previous Orders entered on March 22, 2012[[1]](#footnote-1) and May 10, 2012[[2]](#footnote-2) in this proceeding, this Commission has moved ahead 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.[[3]](#footnote-3) 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.[[4]](#footnote-4) The Commission’s decisions made in the implementation of the *FCC Order* do not infringe upon the pursuit of our appellate rights in the pending federal appeals.[[5]](#footnote-5)

**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.[[6]](#footnote-6)

Subsequent to this, the *FCC Order* directs a multiyear process under which ILECs are to make filings effective July 1 of each year to gradually transition 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.[[7]](#footnote-7)

Through our March 22 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 Order, the Commission entered a Consolidated Short Form and Protective Order addressing, *inter alia*, implementation of Step 1[[8]](#footnote-8) of the transition of the intrastate intercarrier compensation regime to bill-and-keep as contemplated by the *FCC Order*. By this Order we address the implementation of Step 2[[9]](#footnote-9) of that transition.

**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.” (footnotes omitted)[[10]](#footnote-10)

Additionally, through our Order Entered August 9, 2012,[[11]](#footnote-11) the Commission determined that the *FCC Order* constitutes an exogenous event under a typical Chapter 30 Plan and that decreased intrastate access revenues that are not otherwise recovered through the FCC’s support mechanisms may qualify for consideration for a special revenue adjustment.[[12]](#footnote-12) Further, all incumbent local exchange carriers were required to maintain records necessary for re-rating and re-billing in the event that the *FCC Order* is reversed, in whole or in part, on appeal.[[13]](#footnote-13) Accordingly, consistent with our implementation of the Step 1 access charge revisions, we are requiring the tariff supplements implementing the Step 2 access charge revisions be accompanied by certain supporting information.

The Commission has prepared a spreadsheet to be utilized by carriers in the submission of this information. To ensure the confidential proprietary status of this information, the Commission shall grant a Protective Order.

**Timing and Process for Filing Tariffs**

Pursuant to the *FCC Order*, effective July 1, 2013, rates for Transitional Intrastate Access Service shall conform to the requirements set forth in 47 C.F.R. § 51.907(c) for price cap ILECs, 47 C.F.R § 51.909(c) for 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 which illustrates their compliance with the Step 2 access charge revisions. In order to meet the FCC’s July 1, 2013 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 2 access charge revisions as contemplated by the *FCC Order* no later than May 16, 2013.
* All CLECs shall file with the Commission tariff supplements and supporting information implementing the Step 2 access charge revisions as contemplated by the *FCC Order* no later than June 1, 2013.

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 hardcopies of their filings to the Commission’s Secretary’s Bureau, all LECs should send electronic copies of the supporting information, in Microsoft Excel Format, to [RA-PUCTelco@pa.gov](mailto:RA-PUCTelco@pa.gov).[[14]](#footnote-14)

**Protective Order**

As previously stated, carriers, as part of the Step 2 access charge revisions, will be submitting sensitive switched access demand and revenue information related to their respective and anticipated Transitional Intrastate Access Services tariff submissions. Under Commission regulations at 52 Pa. Code §§ 5.362(7) and 5.423(b), a Protective Order may be entered to limit or prohibit disclosure of confidential information where the potential harm to the party would be substantial and outweighs the public’s interest in having access to the confidential information. In its review whether to grant a Protective Order, the Commission must balance the potential harm to the party of disclosure of the confidential information at issue with the public’s interest in free and open access to the administrative process.

The relevant factors to be considered when addressing a request for Protective Order include: (1) the extent to which disclosure would cause unfair economic or competitive damage; (2) the extent to which the information may already be known by others; (3) the potential value of such information to the participant and the participant’s competitors and trade partners; and (4) other statutes or regulations dealing specifically with the disclosure of the information. 52 Pa. Code §§ 5.423(a)(1)-(3) and (5).

Of the information requested of carriers in this matter, certain portions satisfy the standard for the grant of a Protective Order. Specifically, we shall treat carriers’ access line totals, switched access traffic demand minutes of use (MOUs), and disaggregated revenues derived from individual carrier access rate elements as proprietary. Historically, the Commission has ruled this information to be confidential and proprietary in past ILEC price cap and revenue-neutral rate rebalancing filings. In a competitive market, the release of this type of information and financial data would cause substantial harm to a carrier that is providing wholesale switched carrier access services and may be competing with other providers of functionally equivalent or similar services. The resulting harm would be sufficient to outweigh the public interest in access to the information. While we are sensitive to the open access of public information, the disclosure of information that harms the competitive position of carriers would thereby cause indirect harm to Pennsylvania’s telecommunications consumer, by its negative impact upon the competitive telecommunications market.

For those portions of the information requested from carriers that do not raise the same concern for proprietary treatment and confidential status because they do not negatively impact the competitive positions of telecommunications carriers, we shall require disclosure. Specifically, this information includes present and proposed individual Transitional Access Service Rate Elements and present and proposed total Transitional Intrastate Access Service Revenues.

The information required from carriers in order to facilitate the Commission’s efforts to implement the Step 2 access charge revisions is set forth in Attachment A. The portions of the information submitted by carriers which shall be afforded confidential proprietary status and therefore not subject to public disclosure are highlighted in blue. The portions of the information submitted by carriers which shall be subject to public access are highlighted in yellow. This spreadsheet is available in electronic format on the Commission web page at: <http://www.puc.pa.gov/utility_industry/telecommunications/fcc_order_implementation.aspx> under the section entitled “Mandated Access Charge Reduction Filings – Step 2.”

While we issue this Protective Order to assure the confidentiality of proprietary and otherwise competitively sensitive material, we also however, expressly note that any Protective Order granted in the circumstances is with the reservation that the Protective Order does not prohibit the sharing of all carrier information submitted to the Commission if sought in connection with any joint state-federal investigation or enforcement action.

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 2 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 2 access charge revisions as contemplated by the *FCC Order* according to the procedures set forth in this Order. We adopt the spreadsheet attached to this Order, which sets forth the supporting information required to accompany the tariff supplements. Lastly, to ensure the confidential proprietary status of the information requested by Commission staff, the Commission shall grant a Protective Order for the supporting information required from carriers as part of the Commission’s implementation of Step 2 of the eventual transition of the intercarrier compensation regime to bill-and-keep as outlined in the *FCC Order*. **THEREFORE;**

**IT IS ORDERED:**

1. That all Incumbent Local Exchange Carriers must file tariff supplements and supporting information implementing Step 2 of the intrastate access charge revisions as contemplated by the *FCC Order* by May 16, 2013.
2. That all Competitive Local Exchange Carriers having switched access tariffs must file tariff supplements and supporting information implementing Step 2 of the intrastate access charge revisions as contemplated by the *FCC Order* by June 1, 2013.
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 a Protective Order pursuant to this Commission’s authority under 52 Pa. Code §§ 5.362(7) and 5.423(b) be issued for all material designated confidential, as illustrated in Attachment A, and submitted by telecommunication carriers in connection with state implementation of the Federal Communications Commission’s Order, *In re: Connect America Fund*, Docket No. 10-90, *et.al.*
5. The Protective Order is granted with the reservation that the Protective Order does not prohibit the sharing of all telecommunications carrier information submitted to the commission if sought in connection with any joint state-federal investigation or enforcement action.
6. 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 18, 2013

ORDER ENTERED: April 18, 2013

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 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 Order). [↑](#footnote-ref-2)
3. 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*, W 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. The FCC has issued additional reconsideration and clarification Orders in the same proceeding and the issuance of further such FCC rulings is anticipated (*FCC Order*). [↑](#footnote-ref-3)
4. March 22 Order at 1. [↑](#footnote-ref-4)
5. *Commonwealth of Pennsylvania, Pennsylvania Public Utility Commission* v. *Federal Communications Commission and the United States of America*, Docket Nos. 11-9900 and 11-9585 (10th Cir. 2011). [↑](#footnote-ref-5)
6. *FCC Order* ¶ 801. 47 C.F.R. § 51.907(a) and § 51.909(a). [↑](#footnote-ref-6)
7. *FCC Order* ¶ 801, 807. 47 C.F.R § 51.911. [↑](#footnote-ref-7)
8. 47 C.F.R. § 51.907(b), § 51.909(b) and § 51.911(b). [↑](#footnote-ref-8)
9. 47 C.F.R. § 51.907(c), § 51.909(c) and § 51.911(c). [↑](#footnote-ref-9)
10. FCC Order ¶ 813. See also ¶ 803 and ¶ 880. [↑](#footnote-ref-10)
11. *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 August 9, 2012 (August 9 Order). [↑](#footnote-ref-11)
12. The Commission at pages 65-66 of the August 9 Order noted that, because rate change filings made pursuant to Chapter 30 Plans must result in rates that are just and reasonable pursuant to Sections 1301 and 3019 (h) of the Public Utility Code, it was premature to make a blanket ruling that all rate change filings invoking exogenous event treatment will be approved and permitted to go into effect automatically. Rather, as is the case with other Chapter 30 rate change filings, the Commission noted that it would make a final ruling once any proposed rates have been filed and subsequently reviewed to determine whether they are just and reasonable under Section 1301. Further­more, we note that this ruling in the August 9 Order applied to the rural Chapter 30 ILECs. [↑](#footnote-ref-12)
13. August 9 Order at 5. [↑](#footnote-ref-13)
14. We remind ILECs that to the extent they continue to have an intrastate carrier charge or common carrier line charge (CC/CCLC) in their switched access tariffs, the applicable intrastate CC/CCLC revenue allocation method that was adopted in our May 10 Order still applies and is reflected in the templates for supporting information attached to this Order. *See also* May 10 Order , at 7 and Ordering Paragraph No. 3 at 12. [↑](#footnote-ref-14)