STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on May 17, 2012

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

CASE 12-C-0112 - In the Matter of Compliance with the Federal Communications Commission's Report and Order and Further Notice of Proposed Rulemaking, Released November 18, 2011.

ORDER ON TARIFF REVISIONS TO REDUCE TERMINATING INTRASTATE SWITCHED CARRIER ACCESS CHARGES AND RECIPROCAL COMPENSATION

(Issued and Effective May 24, 2012)

BY THE COMMISSION:

INTRODUCTION

On November 18, 2011, the Federal Communications Commission (FCC) released its Report and Order (FCC Order) and Further Notice of Proposed Rulemaking[1] that, among other things, provides for a transitional reduction of terminating switched carrier access charges on both an intra and interstate basis. The ultimate goal is to eliminate most usage-sensitive access charge rate elements by 2020 and, instead, adopt a bill-and-keep

[1] 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. 96-46; Lifeline and Link-Up, WC Docket No. 03-109; and Universal Service Reform – Mobility Fund, WT Docket No. 10-208.

methodology whereby each provider will be responsible for its own costs. Further, the FCC Order calls for reductions in reciprocal compensation rates if a carrier’s reciprocal compensation rates are higher than their interstate access rates.

The first stage of the transitional period for reducing terminating switched access charges and reciprocal compensation is scheduled to begin on July 1, 2012, when intrastate rates will be reduced towards interstate levels in a manner prescribed in the FCC Order. The next scheduled rate reduction, which will take most other intrastate terminating access rate elements to or below interstate levels, is scheduled to take place on July 1, 2013. In this Order we direct all local exchange telephone companies (LECs) in New York, including Competitive Local Exchange Companies (CLECs), to file tariffs in compliance with the FCC Order, as prescribed by the FCC, and in accordance with past Commission Orders relative to New York intrastate access charges.

BACKGROUND

Since the breakup of the Bell System in 1984, local carriers have imposed access charges on toll carriers as compensation for originating and terminating calls on their local networks. Local carriers maintain intrastate and interstate access charge rate structures and charge toll carriers from the appropriate tariffs, depending upon the nature of the traffic. Access charges were historically set at prices above costs to keep the price of local service lower than it would be otherwise, to advance universal service objectives. Over time, many carriers reduced intrastate access charges, mainly as a result of overearnings situations and the Commission’s desire to move access charges closer to costs, but they still remain at levels higher than the cost to originate or terminate a toll call. In addition, access charges are a source of constant complaint by the carriers that pay these charges to subsidize local services, particularly since competition occurs over different platforms and some competitors do not pay access charges, or pay lower access charges than others.

Access charges compensate local carriers for that part of the call between a toll carrier's point of presence (POP) and the end user. Some access charge rate elements are traffic-sensitive (per-minute of use) and others are flat-rated monthly charges. Calls are directly routed from a POP to the LEC end office (dedicated transport), or sent to a tandem switch (local transport), before connecting to the end office serving the end user.

FCC Order

Although some LECs impose a number of different access charge rate elements, the FCC's Order provides for rate decreases in the categories of Switched End Office, Transport (local) and Dedicated Transport, and directs reductions in these categories in 2012. The FCC Order recognizes that the current intercarrier compensation system is outdated and is in need of reform. The key area of reform is the adoption of a uniform bill-and-keep framework as the ultimate price methodology for all telecommunications traffic exchanged between carriers. The FCC Order establishes a plan by which terminating switched access charges provided through local transport facilities, and reciprocal compensation rates, will be reduced to bill-and-keep by the year 2020, and calls for reductions for intrastate dedicated transport rates in 2012.

The carriers have already put into effect two requirements in the FCC's Order: (1) authorization for local carriers to bill access charges for terminating public switched telephone network toll calls originated in Internet Protocol format; and (2) establishment of a bill-and-keep regime for local calling between LECs and wireless carriers.[2] According to the FCC Order, reductions in intrastate terminating access charges in year one of the transition are scheduled to take place on July 1, 2012, with rates decreasing towards interstate levels. On July 1, 2013, rates for intrastate terminating access charges will further decrease to be no higher than interstate levels.[3] LECs, under certain circumstances, will have the ability to charge their local customers a federal Access Recovery Charge, ranging from $0.50/month in the first year of the transition to $2.00/month by the fourth year, to make up some of the lost access charge revenue. The FCC's Connect America Fund also will, under certain circumstances, provide for partial recoupment of lost access charge revenues associated with the transition.

Past Commission Orders on Access Charges Relating to CLECs

Intrastate CLEC access charges, based upon previous Commission decisions,[4] are capped at rates charged by the dominant LEC in their region, unless the CLEC can show that higher rates are cost-based and in the public interest. The dominant carriers in New York are Verizon New York Inc. (Verizon), and Frontier Telephone of Rochester, Inc. (Frontier).

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[2] For those carriers with interconnection agreements, the FCC Order delayed until July 1, 2012 the effective date for implementation of bill-and-keep.

[3] Any intrastate rate element that is currently below the same rate element for interstate will remain at the lower level in year 2013.

[4] Case 94-C-0095, Provision of Universal Service and Transition to Competition in the Local Exchange Market, Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation (issued September 27, 1995), p.16; Opinion 96-13 (issued May 22, 1996), p. 26; and Opinion 98-10 (issued June 2, 1998), p. 25.

Therefore, CLECs must reduce their access charges whenever access charges are reduced by Verizon and/or Frontier.

DISCUSSION

While the intent of the FCC Order is to reduce certain terminating intrastate access charge rate elements on July 1, 2012 by 50% of the difference between intrastate and interstate rates in effect, the specific methodology directed by the FCC to be used to calculate the rate changes is more revenue driven than rate driven. As a result, some local carriers' terminating access charge rates will not change in 2012, or may decrease slightly. In 2013, the rates will drop precipitously to interstate levels for most rate elements and remain lower for any intrastate rate element that is currently priced lower than interstate.

Many LECs intend to eliminate their intrastate access charge rate structure and replace it with the interstate structure, and, in doing so, will eliminate some rate elements while introducing new ones, particularly in the provision of local transport. Overall, however, terminating access charges will be reduced for most LECs and will not increase for any LECs. In addition, any single rate element that provides for a function equivalent to that function priced higher in a LEC's interstate tariff cannot be increased, in accordance with the FCC Order.

Verizon will eliminate its time-of-day access charge rate structure for its usage-sensitive terminating access charges since it does not employ time-of-day rates in its interstate rate schedule. This change could temporarily increase rates for any interexchange carrier that purchases most of its access service during off-peak hours, however, that effect will disappear on July 1, 2013 when rates are further reduced to interstate levels.

Although the FCC Order does not provide for changes in originating access charges, it is anticipated that some companies may elect to change their originating access charge rate structure to mirror the rate elements listed in their interstate tariffs, which would result in revenue-neutral price changes. This approach may be necessary for some companies in order to avoid having to charge toll providers rates from two separate rate structures, as the terminating intrastate access rate structures will largely be changed to the interstate rate structures concurrent with the July 1, 2012 filings. As with the changes to terminating access rates, some originating rate elements will be eliminated while others are added, in a revenue-neutral manner.

CLEC Access Charge Pricing

CLECs are directed by the FCC Order to reduce their intrastate terminating access charges in a similar manner as LECs. However, since intrastate CLEC access charges are capped at rates charged by the dominant LEC in their region, as discussed above, the CLECs will need to know the access rates that will be in effect on July 1, 2012 for these dominant LECs, namely Verizon and Frontier, before they can file their own tariff revisions. Therefore, Verizon and Frontier, at Staff’s request, have already submitted a summary of their expected rate changes for July 1, 2012, and these rates are shown on the Attachment to this Order.

It should be noted that, although CLEC rates cannot exceed the rates of the dominant LEC carriers, the rates also must not exceed levels determined using the revenue reduction methodology prescribed in the FCC Order. Effectively, the rates filed by CLECs must comply with both the FCC and Commission’s requirements. Therefore, the carriers are required to file the lower of the dominant LEC rates, or FCC calculated rates. As the FCC Order states, Section 251(d)(3) of the 1996 Telecommunications Act preserves state access regulation, provided state regulation does not substantially prevent implementation of federal rules and policies. As discussed, the FCC is bringing all telecommunications traffic terminated on LEC networks, including intrastate switched access traffic, into the section 251(b)(5) bill-and-keep framework under a phased-in approach, whereby access rates are reduced periodically. Our CLEC access charge cap rule, last re-stated in Opinion 98-10, provides that no LEC shall charge more than the prevailing LEC intrastate access rate in its particular service area without providing cost-based evidence warranting higher rates. Because Opinion 98-10 will only have the potential of lowering terminating intrastate access charges faster than the FCC's methodology, therefore, Opinion 98-10 does not conflict with federal rules or policy and remains in effect. Any higher rate under Opinion 98-10 substantiated by the evidence provided would be capped at the federal level.

Reciprocal Compensation

The FCC Order requires reductions on July 1, 2012 of reciprocal compensation rates, the intercarrier payments for exchange of local traffic, if a carrier’s reciprocal compensation rates are currently higher than their interstate switched access rates. While tariffed reciprocal compensation charges exist for some companies, most include these rates in interconnection agreements, often as bill-and-keep arrangements. For LECs that have tariffed reciprocal compensation rates lower than interstate access charges, the rates will be lowered by application of the same FCC methodology used to determine access charge reductions.

Process Issues

Carriers are directed to file tariffs[5] effective, July 1, 2012, in compliance with the Commission's relevant orders and the FCC Order. Although the Commission is not establishing any new rules associated with the FCC mandated rate changes, submitting tariff revisions in compliance with this Order allows tariffs to become effective on less than the Public Service Law's (PSL) statutory notice (§92(2)). The statute generally requires a minimum of 30 days between the time tariffs are issued and the effective date. This Order will allow tariff revisions issued in compliance to become effective on not less than 15 days' notice, thereby providing for an issued date of no later than June 15, 2012 (effective July 1, 2012). This arrangement provides additional time for all companies to prepare and file their tariff revisions. Any tariff page filed on less than 30 days' notice needs to have a notation on the bottom of the page that reads, "issued in compliance with the Commission's Order in Case 12-C-0112, issued (date)."

In addition to the tariff revision filings, all LECs and CLECs need to include the FCC-mandated calculations that support the rate changes for access charges and reciprocal compensation rates, if applicable. Companies may request to file the calculations with the Department's Records Access Officer, if warranted.

Finally, reductions to access charges directly impact toll carriers in the form of lower costs of service, and should, therefore, indirectly impact consumers through lower toll charges. Since the toll market has been sufficiently

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[5] For companies whose intrastate access charge rates and rate structure mirror their interstate rates and rate structure, a reference to their appropriate interstate tariff is sufficient in lieu of listing every rate element in their intrastate tariff.

competitive for many years, we expect that there will be an eventual flow-through of access charge reductions to consumers in the form of lower per minute toll rates, bundled packages of toll service or standalone in-state fees without the need to mandate such toll reductions.

CONCLUSION

The FCC has ordered reductions to intrastate terminating switched access charges and reciprocal compensation rates over a transitional period, with the first reduction being effective on July 1, 2012. This Order directs all LECs and CLECs that currently have tariffed intrastate access charges to comply with the FCC Order and file all appropriate tariff pages and supporting calculations no later than June 15, 2012.

The Commission orders:

1. Each local exchange carrier shall file tariff revisions to comply with the Federal Communications Commission's rate changes associated with terminating switched access charges and reciprocal compensation rates, including the FCC-required calculations, as discussed in the body of this Order, on not less than 15 days' notice, to become effective July 1, 2012, or demonstrate why it is not required to submit such rate changes.

2. Each competitive local exchange carrier shall file tariff revisions to comply with the Federal Communications Commission's rate changes associated with terminating switched access charges and reciprocal compensation rates, including the FCC-required calculations, as discussed in the body of this Order, on not less than 15 day's notice, to become effective July 1, 2012, or demonstrate why it is not required to submit such rate changes. Each competitive local exchange carrier

shall file rates based upon the Federal Communications Commission calculations, or the rates charged by the dominant carrier in the region in which service is provided, as shown in the Attachment to this Order, whichever is lower.

3. Any tariff page filed in compliance with this Order, if filed on less than 30 day’s notice, must include the following notation on each page:

> “issued in compliance with the Commission’s Order in Case 12-C-0112, issued (date).”

4. This proceeding is continued.

By the Commission,

Jaclyn A. Brilling
Digitally Signed by Secretary
New York Public Service Commission

(SIGNED) JACLYN A. BRILLING
Secretary

FRONTIER TELEPHONE OF ROCHESTER

Frontier Telephone of Rochester (FTR) is restructuring its intrastate originating access charges to mirror its interstate rate structure, in a revenue-neutral manner. Frontier will restructure its intrastate terminating access charges to mirror its interstate rate structure, but will decrease these rates in accordance with the FCC Order. CLECs providing service in the Rochester LATA can charge rates no higher than the lower of: 1. the rates shown below; or 2. the rates that result from FCC-mandated calculations included in the FCC’s November 18, 2011 Order.

These are the actual tariffed rates for **originating access** that Frontier will file, with an effective date of July 1, 2012:

FTR Traffic-Sensitive Elements – Originating Access:

Local Switching, per-minute: $0.00997807
Tandem Switched Termination, per-minute, per termination: $0.00733784
Tandem Switched Facility, per-minute per-mile: $0.00011069
Tandem Switching, per-minute: $0.00010000
Common Trunk Port, per-minute: $0.00070000
Shared Mux DS3 to DS1, per-minute: $.00001000

FRONTIER TELEPHONE OF ROCHESTER (Continued)

These are the actual tariffed rates for **terminating access** that Frontier of Rochester will file for an effective date of July 1, 2012:

FTR Traffic-Sensitive Elements – Terminating Access:

Local Switching, per-minute: $0.00997807
Tandem Switched Termination, per-minute, per termination: $0.00232097
Tandem Switched Facility, per-minute per-mile: $0.00004000
Tandem Switching, per-minute: $0.00010000
Common Trunk Port, per-minute: $0.00070000
Shared Mux DS3 to DS1, per-minute: $.00001000

Other Notable FTR Monthly Access Rates:

DS0 Dedicated Trunk Port - $10.00
DS1 Dedicated Trunk Port - $190.00
DS1 Tandem Trunk Port - $180.00
DS1 Entrance Facility - $175.00
DS1 Direct Trunked Termination- $40.00
DS1 Direct Trunked Facility - $30.00

VERIZON NEW YORK INC.

Verizon Originating Access

Verizon will not be changing its intrastate originating access charge rates or rate structure. Therefore, CLECs continue to have the option of charging rates that are no higher than Verizon's current originating access charge rate levels, or charging a blended per-minute rate of $0.02085.[1]

Verizon Terminating Access

Effective July 1, 2012, Verizon will be changing its intrastate terminating access charge rates and rate structure to mirror its interstate rates and rate structure. Any individual intrastate rate element that is currently lower than the comparable interstate rate element will continue at the current, lower rate level. In accordance with an option provided for in the FCC Order, Verizon will charge a new temporary per-minute rate element, the Transitional Terminating Access Charge, which will expire on July 1, 2013. This charge will recoup any lost revenue in excess of the required revenue reduction realized by changing to the interstate rate levels and rate structure on July 1, 2012. Since the time-of-day access pricing is being eliminated on terminating access, a blended rate option is no longer necessary. Therefore, CLECs cannot charge rates higher than those shown below.

Verizon Traffic-Sensitive Elements – Terminating Access:[2]

Local Switching, per minute: $0.002406
Local Transport Facility, per minute, per mile: $0.000002
Tandem Switching, per minute: $0.001574
Transitional Terminating Access Charge, per minute: $0.012446
Shared Trunk Port, per minute: $0.001688

[1] The blended rate option provides an alternative to CLECs that do not want to have time-of-day access charge pricing.

[2] The rate is now zero for Carrier Common Line, Local Transport Termination and Transport Multiplexing on terminating access.

VERIZON NEW YORK INC. (Continued)

Other Notable Verizon Monthly Access Rates:

Tandem Dedicated Trunk Port: $9.90
DS1 Entrance Facility: $190.00
DS3 Direct Trunked Transport, fixed: $702.00
DS3 Direct Trunked Transport, fixed, 7-year term: $421.20
DS3 Direct Trunked Transport, per mile: $120.00
DS3 Direct Trunked Transport, per mile, 7-year term: $72.00
DS3 Multiplexing to DS1: $900.00
DS3 Multiplexing to DS1, 7-year term: $540.00