**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission Ordered Investigation into Intrastate Carrier Access Reform Pursuant to S.B. 162. | ) ) ) | Case No. 10-2387-TP-COI |

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# COMMENTS OF THE MACC COALITION

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## INTRODUCTION

The Midwest Association of Competitive Communications, Inc. ("MACC") is an allied group of telecommunications companies and interested associated businesses. The MACC[1] is dedicated to supporting a regulatory environment that fosters competition in the communications marketplace.

The MACC companies vary in what they do. Each offers different services and serves different types of customers and geographic markets. Some companies, for instance, focus on providing residential telephone service through the existing phone lines. Others focus on wholesale services or create new infrastructure to serve all sizes of businesses or office buildings (small, medium, large), thereby linking this new investment to the existing public network. What unites us all is our belief that a vibrant, open market encourages all companies—the big as well as the small—to offer better service, provide the lowest possible prices, and roll-out innovative products that push the Midwest ahead in the national and global economy.

By Entry issued November 3, 2010, the Public Utilities Commission of Ohio ("Commission" or "PUCO") set forth the Commission Staff's proposed access restructuring plan, and invited

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1 A list of MACC members can be located at http://www.macconline.net/carrier_members.html.

interested stakeholders to file comments along with responses to the list of questions set forth on Appendix B of that Entry. The following MACC members (collectively the "MACC Coalition") herewith submit their comments regarding the issues and question raised by the November 3, 2010 Entry: tw telecom, Level 3 Communications, Inc., Cavalier Telephone, PAETEC, One Communications, First Communications. These comments reflect the position of the MACC Coalition members only, and not that of the broader MACC membership. The MACC Coalition appreciates this opportunity to provide the Commission with commentary on this subject of great importance to the CLEC community.

## COMMENTS

The use of access charges as a default mechanism for universal service support has long posed a barrier to entry into the service territories of rural ILECs. The MACC Coalition is eager to see an alignment of access charges with some semblance of economic rationality. But, that interest in economic rationality is tempered by a concern that the Staff's proposal leaves unanswered a number of questions that must be addressed before a better understanding of the costs and consequences of the proposal can be had. The Staff proposal to create an Access Restructuring Fund ("ARF") and related restructuring mechanism is an admirable attempt at beginning a dialog to change the traditional subsidy role of the access charge regime. But, the MACC Coalition urges the Commission to view it only as that: the beginning of what should be a longer and more in-depth discussion of the issues involved. As the questions contained in Appendix B demonstrate, there are a host of complex issues intertwined with the funding mechanism proposed by Staff, not the least of which is whether the Staff's proposal will provide any measure of relief to the perceived problem of revenue erosion faced by rural ILECs without causing further distortions in the competitive telecommunications landscape.

While SB 162 provided the Commission with a broad measure of authority to examine intrastate access charges and the related high-cost support,[2] that legislation did not direct the Commission to exercise its authority within any particular timeframe or to move in any particular policy direction. It is the position of the MACC Coalition that universal service problems must be addressed on a more comprehensive basis, far beyond the context of mere access charge reform. At most, the Staff proposal is only a point of departure to begin those discussions.

## RESPONSES

**1) The Staff's proposed plan for the restructuring of ILEC access rates addresses the impact of access rate reduction only and does not address the impact of access line loss on the rural ILECs' provider-of-last resort obligation. Should the impact of access line loss on revenue be addressed as part of the access restructuring plan? What are the advantages and disadvantages of such an addition to the restructuring plan?**

**RESPONSE**

Initially, it is unclear whether line losses suffered by one class of carriers (ILECs) to competition warrants revenue replacement through universal service funds. That is why the question suggests that the Staff's plan may actually be an attempt to address broader universal service considerations, as does the Staff's proposed ARF re-calculation process that takes into account changes in access line counts over time. Universal service support is a larger, more complex subject than simple access charge reform and the question regarding the impact of line loss simply underscores the vast complexity of the issues involved in Staff's proposal. It should be treated and studied in a comprehensive manner instead of through the exclusive use of a simple "tax" on intrastate telecommunications revenues. For instance, the Staff's plan might provide a subsidy mechanism that

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[2] Ohio Revised Code Section ("R.C.") 4927.15 now provides as follows: (B) The public utilities commission may order changes in a telephone company's rates for carrier access in this state subject to this division. In the event that the public utilities commission reduces a telephone company's rates for carrier access that are in effect on the effective date of this section, that reduction shall be on a revenue-neutral basis under terms and conditions established by the public utilities commission, and any resulting rate changes necessary to comply with division (B) or (C) of this section shall be in addition to any upward rate alteration made under RC 4927.12 of the Revised Code. (C) The public utilities commission has authority to address carrier access policy and to create and administer mechanisms for carrier access reform, including, but not limited to, high cost support.

is slightly more stable than the current access charge subsidy regime, but it is impossible to determine whether this revenue replacement mechanism will have any impact on the long term stability of the services that universal service support is designed to support. Moreover, there are a host of other issues that need to be considered along with the impact of line loss, including the growth of other revenue sources and the need to reexamine local rates to determine if they should be increased to a benchmark level before guaranteeing revenue-neutral recovery for the corresponding access charge reductions.

2) **Although the Staff's proposed plan does not require interconnected voice over Internet protocol (VoIP) service providers to contribute to the restructuring fund, it requires a provider of telecommunications services to a provider of interconnected' VoIP-enabled services to pay the mandatory monthly contribution related to those VoIP services. As VoIP traffic volumes terminating on the eligible ILECs' networks increases, is this a reasonable approach to obtain support from all beneficiaries of the eligible ILECs' networks?**

**RESPONSE**

This provision of the Staff proposal appears to be an "end-around" on the General Assembly's limitation of the Commission's jurisdiction over VoIP providers [R.C. 4927.03(A)]. This is a "tax" on VoIP service in the guise of a tax on wholesale services. Such an "end-around" on the general assembly's intentions will no doubt receive close judicial scrutiny.

In addition, USF assessments are not typically assessed on wholesale revenue –the users of the service being supported should, in the first instance, pay for that "universality." The Staff's proposal to assess the provision of wholesale service to VoIP is too indirect. Perhaps the Staff believes that this charge will get passed along to the ultimate consumer, but the complexity of the competitive marketplace may not make that possible and unintended consequences could occur.

Moreover, it is not apparent whether the intrastate revenues derived from wholesale services to VoIP providers are readily identifiable, since such services are not typically provided on a state jurisdiction-specific basis. Additionally, since VoIP service itself has been determined by various courts to be an interstate service, attempting to claim the underlying wholesale services supporting VoIP as jurisdictional intrastate revenues may be problematic.

As a final point on this issue, it is essential that any assessment of such revenues be on an "as collected" basis, since collection problems are common with respect to these services. Any requirement to pay an assessment on revenues not actually received would be problematic.

3) **The Staff's proposed plan includes a provision for recalculating the size of the restructuring mechanism for each eligible ILEC every two years after the initial restructuring mechanism becomes operational. Is this a reasonable time frame? If not, how often should the recalculation of the fund occur? Should the fund recalculations for price-cap eligible ILECs and non-price-cap eligible ILECs be performed at different intervals?**

**RESPONSE**

The MACC Coalition has no comment on the timing-aspect of the mechanism recalculation.

4) **The Staff's proposed plan includes different methodologies for recalculating the size of the access restructuring mechanism for price-cap eligible ILECs than the methodology proposed for nonprice-cap eligible ILECs. Is this a reasonable approach?**

**RESPONSE**

This is a difficult question because it really goes to the heart of whether the Staff's proposal will adequately serve the purpose of stemming the tide of revenue erosion from access line reductions. The concern here is that the linkage between the fund, developed *ostensibly* to keep rural ILEC revenue neutral as a result of access charge reduction, is being converted into more of a universal service support mechanism designed to address access line erosion. The financial consequences of this conversion are unclear at this point and it would be unwise for the Commission to select the Staff's proposal as a means of addressing the broader issue based on the scant information before it at this time. One thing that is clear about the Staff's proposal is that by introducing the concept of line loss into the recalculation of the support payments, it will not be revenue neutral as to the reduction in access charges, but rather will reflect the effects of other, unrelated concerns.

**5) The Staff proposes a third-party administrator to oversee the access restructuring fund. How should this third-party administrator be selected? What criteria for selecting a third-party administrator should be included in the selection process? Are there alternatives to a third-party administrator that the Commission should consider?**

**RESPONSE**

The MACC Coalition has no comment on this issue except insofar as to observe that the use of a third party administrator is a reasonable approach, and the Commission has extensive experience in selecting such third party contractors. This being said, it is unclear whether there should be a fund to administer.

**6) The Staff proposes that the projected administration costs be included in the fund size calculation. How should a reasonable initial administration cost amount be estimated? How should it be calculated on an ongoing basis?**

**RESPONSE**

Without conceding the need for the administrator, the initial administrative costs would need to be determined through some form of a request for proposal process wherein the successful bidders would need to make such estimations.

**7) The Staff proposal includes a provision to allow the Commission to revisit the access restructuring mechanism if the Federal Communications Commission (FCC) takes specific actions. Is this a reasonable approach?**

**RESPONSE**

This question highlights the wisdom, also advanced by other parties in this docket, of suspending this docket while the FCC undertakes extensive intercarrier compensation reform, including reform of intrastate access charges that it is has proposed. In light of the fact that the FCC may preempt the state commissions with respect to the access charge structure, such a reopener is important, if not essential. The Commission may retain such authority, in any event, if the jurisdiction of the Commission were to be circumscribed by a greater authority, or if the Staff's proposal were to be found to otherwise violate Section 253(a) of the Telecom Act as being overly discriminatory.

**8) In what ways, if any, can the Staff proposal be modified to address various contingencies including, but not limited to, carriers entering or exiting the Ohio market and mergers between and acquisitions of carriers doing business in Ohio?**

**RESPONSE**

This question highlights one of the basic problems with the Staff's proposal. The fund balance that will be required to serve its purported purpose is variable based on both the volume of access traffic handled by the rural ILECs, as well as by the recalculation method proposed by the Staff to include access line-count considerations, while the fund balance itself will be dependent on the level of intrastate revenues of the carriers being "taxed." The question posed is simply one subcategory of the overall complexity of the mechanism proposed by the Staff. It is conceivable, hypothetically, that as the support needs of the rural ILECs increase, a corresponding decrease in intrastate revenues could be experienced by the fund, thereby causing a death spiral for the entire mechanism. Under those circumstances, carriers entering the market will not be a consideration.

**9) If a carrier believes that it is not a contributing carrier, how shall such a carrier inform the Commission of its belief? How should the Commission deal with such carriers?**

**RESPONSE**

Again, without conceding the need for this process, if a regulated carrier believes that it is exempt from contributions, it should file either a specific form or file for an exemption explaining the basis for its position.

## CONCLUSION

The MACC Coalition appreciates the opportunity to comment and again stress to the Commission that the Staff's proposal should be looked upon as a point of departure for a more thorough and broader examination of the question of the universal service issues posed by the loss of access lines, the need for access charge reform and the carrier of last resort issues that appear to be a concern to the Staff and the Commission.

Respectfully submitted on behalf of
THE MACC COALITION


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