

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The Commission finds:

- (1) On November 18, 2011, the Federal Communications Commission (FCC) released its Report and Order and Further Notice of Proposed Rulemaking (Report and Order) in WC Docket No. 07-135 et al., *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers*. In its Report and Order, the FCC adopted a uniform national bill-and-keep framework for both intrastate and interstate telecommunications traffic exchanged with a local exchange carrier. In doing so, the FCC decided that, while some commenters believe that such a uniform approach is inappropriate because states should be allowed to pursue intrastate access reform, a uniform national approach will best create predictability for carriers and promote efficient pricing and new investment to the benefit of consumers (Report and Order, ¶796). The FCC noted that "[a]lthough we adopt bill-and-keep as a national framework governing both inter- and intrastate traffic, states will have a key role in determining the scope of each carrier's financial responsibility for purposes of bill-and-keep and in evaluating interconnection agreements negotiated or arbitrated under the framework in sections 251 and 252 of the Communications Act" (*Id.* at ¶¶34, 650).

In order to accomplish this ultimate goal, the FCC established a multi-year transition period. First, as of the effective date of the Report and Order, carriers were required to cap most intercarrier compensation rates. Next, in order to reduce the disparity between intrastate and

interstate terminating rates, carriers were required to bring these rates to parity within two steps by July 2013. Finally, the FCC required that carriers reduce their termination rates to bill-and-keep within six years for price cap carriers and nine years for rate-of-return carriers. Additionally, the FCC indicated that "[s]tates will play a key role in overseeing modifications to rates in the intrastate tariffs to ensure carriers are complying with the framework adopted in this Order and not shifting costs or otherwise seeking to gain excess recovery" (*Id.* at ¶35).

- (2) On December 8, 2011, the Commission filed an appeal of the FCC's Report and Order with the U.S. Court of Appeals, Sixth Circuit.¹ Specifically, the appeal focused on the FCC's preemption of the Commission's delegated authority, pursuant to Sections 251 and 252 of the 1996 Act, to establish intrastate access rates.
- (3) While recognizing that the FCC's Report and Order is not stayed pending a decision from the Tenth Circuit, the Commission reserves its rights relative to addressing intrastate access reform.
- (4) Pursuant to the Commission's Entry of February 29, 2012, all incumbent local exchange companies (ILECs) and all competitive local exchange carriers (CLECs) were directed to file, in this docket, the applicable applications for the first phase of access charge reductions consistent with the FCC's Report and Order. The Commission stated that the new intercarrier compensation rates shall be automatically effective beginning on July 1, 2012, subject to a true-up to the extent that the Commission subsequently determines that the submitted rates require modification.

¹ The Commission's appeal was one of 13 petitions for review of the FCC's Report and Order filed in eight different Courts of Appeal. The U.S. Judicial Panel on Multidistrict Litigation issued an order indicating that it had randomly selected the U.S. Court of Appeals, Tenth Circuit, as the venue for the consolidated petitions.

- (5) The FCC, in its March 28, 2012, Order in WCB/Pricing File No. 12-07, *In the Matter of July 3, 2012 Annual Access Charge Tariff Filings*, modified the required tariff filing date for all ILECs from July 1, 2012, to July 3, 2012.² Therefore, consistent with that modification, the Commission amends its Entry of February 29, 2012, to now reflect that the new intercarrier compensation rates for all ILECs shall be automatically effective as of July 3, 2012. The effective date for new intercarrier compensation rates for CLECs remains unchanged and will continue to be July 1, 2012.
- (6) As previously stated in the Commission's Entry of February 29, 2012, for those local exchange companies that fail to file their requisite application or notification demonstrating compliance with the FCC's directives, the applicable effective intercarrier compensation rates will be deemed to be unjust and unreasonable. As a result, commencing on July 1, 2012, for CLECs and July 3, 2012, for ILECs, carriers will be prohibited from charging for intrastate intercarrier traffic until they have Commission approved tariffs.

It is, therefore,

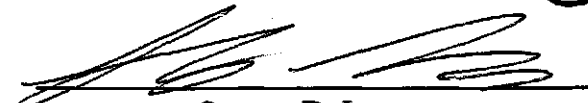
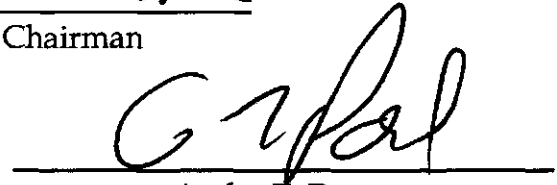
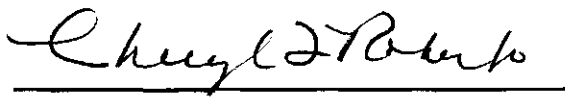
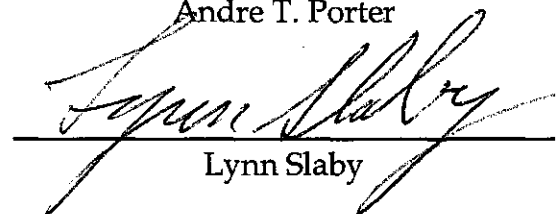
ORDERED, That the effective date for ILEC tariff amendment applications is amended in accordance with Finding (5). It is, further,

ORDERED, That, in accordance with Finding (6), those local exchange carriers that fail to file the requisite application to amend their intercarrier compensation rates will be prohibited from charging for intrastate intercarrier traffic as of the applicable date. It is, further,

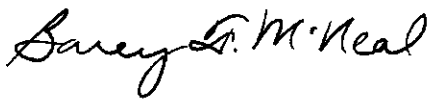
² See March 28, 2012, Order, ¶15.

ORDERED, That a copy of this Entry be served via the Commission's electronic mail Telephone Industry Service List, upon all ILECs, all CLECs, all providers of telephone toll service, all wireless service providers registered with the Commission, the office of the Ohio Consumers' Counsel, the Ohio Telecom Association, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


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JSA/dah

Entered in the Journal
MAY 30 2012Barcy F. McNeal
Secretary