Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Eliminating *Ex Ante* Pricing Regulation and Tariffing of Telephone Access Charges	)	WC Docket No. 20-71
	)	

Comments of
The Small Company Coalition

I. INTRODUCTION AND SUMMARY

The Small Company Coalition (SCC) files these comments in response to the Notice of Proposed Rulemaking issued in the above-captioned proceeding.[1]

The SCC is an alliance of rural telecommunications and broadband providers as well as supporting vendor companies formed to educate and empower small rural communications carriers and strives to ensure that the voice of small companies is heard by those who have a genuine interest in protecting and enhancing the communication service needs of rural Americans.

In the *NPRM*, the Commission proposes drastic changes to the way certain "telephone access charges" (TAC) are treated in the federal jurisdiction. The Commission proposes to price deregulate, detariff, and prohibit interstate-based cost recovery via separate line items on the end user bill. In essence, the Commission has shifted this cost recovery to the intrastate jurisdiction for those companies affected. For many rural carriers, this means cost recovery afforded by the Subscriber Line Charge (SLC) and the Access Recovery Charge (ARC) will be shifted to the

[1] *In the Matter of Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges,* Notice of Proposed Rulemaking, WC Docket No. 20-71 (FCC 20-40, rel. April 1, 2020) (*NPRM*)

intrastate jurisdiction. While the SCC appreciates the apparent deregulatory approach being proposed by the Commission, shifting such levels of cost recovery to the intrastate jurisdiction on a mandatory basis is inadvisable at this time. Given that there is no apparent need for the deregulation and detariffing action as proposed in the *NPRM* at present, the SCC urges the Commission to adopt a permissive, instead of a mandatory, policy for recovery of TACs.

I. THE COMMISSION'S PROPOSAL

The Commission proposes to eliminate *ex ante* pricing regulation of certain so-called "telephone access charges." These TACs include the SLC[2], ARC[3], the presubscribed interexchange carrier charge (PICC)[4], the line port charge[5], and the special access surcharge.[6] The reason provided by the Commission for making these changes at this time is that "significant marketplace and regulatory changes over the past two-plus decades call into question whether *ex ante* price regulation and tariffing of Telephone Access Charges remain in the public interest."[7]

Also under consideration in the NPRM is the detariffing of TACs on the theory that "prices charged by incumbent local exchange carriers in many of the areas that are less likely to have robust competition are subject to other regulatory constraints."[8] One of these additional constraints discussed by the Commission is the reasonably comparable local rate requirement where Eligible

[2] *NPRM* at 6-8
[3] *Id.,* at 9-13
[4] *Id*., at 14
[5] *Id*., at 15
[6] *Id.*, at 16
[7] *Id.*, at 4
[8] *Id.,* at 41

Telecommunications Carriers must offer basic voice service to all at rates no higher than those adopted by the Commission.[9] It should be noted that for 2020, that rate is $54.76.[10]

Under the guise of simplifying consumers' bills, the Commission proposes to prohibit carriers from assessing any separate TACs on customer bills after those charges are deregulated and detariffed.[11] This would mean that in addition to detariffing, carriers would have to stop including separate line items for SLCs and ARCs, for example.

II. DEREGULATION AND DETARIFFING MUST BE PERMISSIVE

The end result of the Commission's proposals in the *NPRM*, if made mandatory, is that many carriers will be forced to seek permission to raise basic local rates from their state commission or Tribal regulatory authority. While the Commission recognizes this problem, it nevertheless insists on making the deregulation and detariffing of TACs mandatory.[12] Considering the effect on the customer, in the worst case, will likely be no net change in end user charges, the burden on carriers not operating in states or Tribal jurisdictions with the requisite local rate flexibility will be unreasonably high. Given this, and the further information discussed below, the Commission must make any deregulation and detariffing of TACs permissive, and not mandatory.[13]

In addition to issues with the mandatory deregulation and detariffing of TACs, along with the prohibition of separate line items on customer bills, there does not appear to be any pressing

[9] *Id.*,
[10] *Wireline Competition Bureau and Office of Economics and Analytics Announce Results of 2020 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Allowance for Eligible Telecommunications Carriers*, Public Notice, WC Docket No. 10-90 (DA 19-1237, rel. December 5, 2019)
[11] *NPRM* at 61
[12] *Id.* at 49
[13] *See e.g.*, *NPRM* at 60 "should the Commission consider permissive detariffing of Telephone Access Charges for some categories of carriers, such as rate-of-return carriers, as suggested by NTCA?"

need, at this time, to take the actions proposed by the Commission. The SCC's members are not aware of any customer complaints regarding the "complexity" of end user bills containing TACs such as SLCs and ARCs. SLCs have been a regular feature of end user bills since 1983, and ARCs were added more recently and only after customers were notified of the change and the charge was explained via customer communications. Furthermore, the SCC is not aware of any general call from the rural local exchange carrier (RLEC) industry to deregulate and detariff any of the TACs mentioned in the *NPRM*. This calls into question the Commission's undertaking this major change under its own advisement, and whether such a change is necessary, reasonable, or advisable at this time.

A. Not All States Will Automatically Allow Rate Increases

The mandatory deregulation and detariffing of certain TACs, along with the prohibition on the inclusion of any "federal" separate charge on end user bills, will be rendered unreasonable if any state has not adopted local rate flexibility or otherwise decreased regulation of local rates that would allow recovery of the formerly federal TACs. The SCC will provide two examples below – from Kansas and New Mexico – that will require any such deregulation and detariffing be permissive in nature only.

In Kansas, the type of reduced or streamlined regulation that would allow small RLECs to increase local rates is not available. Furthermore, Kansas RLECs that receive Kansas Universal Service Support are subject to a statewide affordable rate for residential services that is currently established at $17.75.[14] Finally, RLEC recipients of KUSF support are subject to a regulation that calls for a dollar-for-dollar reduction in KUSF for rates above the statewide affordable rate.[15] As

[14] Kansas Corporation Commission Docket No. 19-GIMT-056-GIT, *Order Cancelling Evidentiary Hearing and Adopting KUSF Assessment Rate Based Upon Prefiled Testimony*, issued January 10, 2019
[15] K.S.A. 66-2005(d) and (e)

a result, if TACs are deregulated and detariffed on a mandatory basis, a likely scenario for many Kansas RLECs is to attempt raising local rates, and to the extent this is successful, face a reduction in KUSF support. Moreover, any attempt to increase KUSF support to recognize the decreased revenues, costs related to the provision of intrastate universal service, and the related shortfall can only be made through a full cost of service review (i.e., a rate case).

In New Mexico, there are no specific limitations on changes in local rates. However, pursuant to New Mexico regulations, carriers seeking local rate increases may be subject to a review if (1) New Mexico Public Regulation (NM PRC) Staff files a motion for a hearing and demonstrates good cause, or (2) at least 2.5% of all affected subscribers file a protest with the NM PRC within 60 days.[16] In addition, carriers operating in New Mexico that are recipients of state rural universal service support (SRUSF) related to the reimbursement of decreased revenues for intrastate access rate reductions also, similar to those operating in Kansas, are subject to an affordability benchmark rate.[17] For any local and/or business rate that is above the affordability benchmark rate, the carrier's SRUSF support would effectively be reduced during the next annual determination of SRUSF support.[18]

It is therefore clear from examples of just two states – Kansas and New Mexico – that carriers seeking to raise local rates to offset the mandatory deregulation and detariffing of certain TACs would experience potentially steep and costly roadblocks in the form of regulatory filings.

[16] 17.11.9.9(b)(4) NMAC
[17] 17.11.10.9 NMAC
[18] 17.11.10.19 (E) NMAC, which calls for each carrier's SRUSF support be offset by imputed benchmark revenue. According to 17.11.10.7(Q), imputed benchmark revenue "means the difference between the affordability benchmark rates established by the commission pursuant to this rule and the carrier's basic local exchange residential and business rates as of July 1, 2014, multiplied by the number of basic local exchange residential and business access lines served by the carrier as of December 31 of the [preceding] year" Thus, when local rates increase, imputed benchmark revenues also increase, which then offsets the SRUSF support.

Further, raising local rates in these two states could result in a reduction in state USF support, the replacement for which would likely be another costly and burdensome regulatory proceeding.

B. Separations Issues

While the Commission addresses various issues related to federal universal service funding and other programs, any changes to separations rules made necessary by the mandatory deregulation and detariffing of certain TACs are ignored. For example, if the recovery of the SLC is to be shifted to the states, there is a potential mismatch between those charges and the costs related to the service to be recovered. Specifically, SLCs were designed to recover a portion of the carrier common line costs allocated to the interstate jurisdiction. For costs apportioned to subscriber lines, 25% is allocated to the interstate jurisdiction.[19] Without revising this allocation, the Commission could potentially shift responsibly for establishing rates (i.e., the SLC) without shifting the related costs, leading to a likely mismatch between costs and rates. This could make it even more difficult for affected carriers to seek rate relief from state commissions or Tribal regulatory authorities.

Given the facts outlined above, should the Commission decide to deregulate and detariff certain TACs, the SCC believes that it must seek to revise current separations rules. Given that the changes needed will affect costs allocated to the intrastate jurisdiction, the SCC suggests such a change must be sought through the Federal-State Joint Board on Separations process.

[19] 47 CFR §36.154(c)

CONCLUSION

While the SCC appreciates the Commission seeking to decrease the regulatory burden on small rural providers, the proposal to deregulate and detariff certain TACs on a mandatory basis is misplaced at this time. The SCC is not aware of any urgent need to take these steps, and since some of these TACs, such as the SLC, have been around for decades, there does not appear to be any regulatory burden related to billing and collecting such charges. Further, since some of the states in which potentially affected carriers operate do not have regulatory regimes that would allow simple recovery of the formerly federal TACs, requiring deregulation and detariffing of these charges could result in significant burdens on carriers. Finally, prior to adopting any type of mandatory deregulation and detariffing of TACs, the Commission must grapple with the changes that may be necessary to separations rules. For these reasons, the SCC opposes mandatory deregulation and detariffing of TACs, and instead urges the Commission to make any changes permissive in nature.

Respectfully Submitted,

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