

**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

**REPLY COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

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Dated: August 4, 2020

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The Massachusetts Department of Telecommunications and Cable (“MDTC”)¹ respectfully submits these reply comments in response to the Notice of Proposed Rulemaking released by the Federal Communications Commission (“FCC”) on April 1, 2020.² The FCC seeks comment on its proposal to prohibit local exchange carriers (“Carriers”) from separately listing end-user charges associated with interstate access service offered by incumbent local exchange carriers (“ILECs”) on customer bills. In addition, the FCC seeks comment on its proposal to eliminate *ex ante* price regulation and tariffing of these end-user charges, including the subscriber line charge (“SLC”), the Access Recovery Charge (“ARC”), the Presubscribed

¹ The MDTC regulates telecommunications and cable services within Massachusetts and represents the Commonwealth before the FCC. MASS. GEN. LAWS ch. 25C, § 1; MASS. GEN. LAWS ch. 166A, § 16.

² *In re Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71, Notice of Proposed Rulemaking (Apr. 1, 2020) (“NPRM”).

Interexchange Carrier Charge (“PIC”), the Line Port Charge (“LPC”), and the Special Access Surcharge (“SAS”), collectively, Telephone Access Charges (“TACs”).³

First, the MDTC largely agrees with those commenters who could not identify specific benefits of the proposed changes for Carriers, state commissions, or consumers, but did identify several concerns, and thus joins the majority of those filing comments in urging the FCC not to move forward with the proposed changes. Second, instead of prohibiting carriers from separately listing TACs on consumers’ bills, the MDTC suggests that the FCC can better achieve its goal of improving price transparency by establishing both a specific name for TACs that carriers must use to identify such charges on bills and a specific, brief explanation of TACs that carriers must also include on bills. Third, the MDTC urges the FCC to determine the accuracy of the Carriers’ current interstate/intrastate allocation of local voice service revenues and the potential impact of the proposed changes on the contribution factors of the Universal Service Fund (“USF”) and other federal programs.⁴ Finally, should the FCC choose to eliminate *ex ante* price regulation and detariff TACs, the FCC should do so permissively at carriers’ discretion, or should maintain the status quo in those states that continue to exercise authority over intrastate telephone service.

I. THE FCC SHOULD MAINTAIN THE STATUS QUO REGARDING THE PRICING AND TARIFFING OF TACS.

The FCC should not adopt the proposals contained in this NPRM because, as many commenters in this proceeding have indicated, the proposed changes risk causing several

³ The NPRM also allows for the consideration of other, similar charges in this proceeding. NPRM ¶ 52.

⁴ Carriers’ reported allocations of these revenues determine their contributions to the USF and the Interstate Telecommunications Relay Service Fund and to Local Number Portability and North American Numbering Plan Administrations. NPRM ¶ 77.

problems, while offering few if any provable benefits.⁵ Collectively, the proposed changes would infringe on states' longstanding jurisdiction over intrastate telephone services,⁶ might exacerbate imbalances in USF contributions and funding,⁷ and would make customer bills less, not more, transparent and understandable.⁸

Federal telecommunications law has long recognized state authority over intrastate services.⁹ But the proposed combination of detariffing TACs and deregulating TAC prices while prohibiting separately listed TACs on customer bills would improperly infringe on state caps on intrastate voice service rates, undermining state authority. The NPRM discusses and seeks comment on Carriers adding TACs to other line items on customer bills that include intrastate voice service charges, whether for standalone service or intrastate voice services bundled with interstate voice services.¹⁰ This would either impermissibly allow Carriers to adjust the intrastate portion of their rates without prior state approval, or impermissibly coerce states to raise their

⁵ See, e.g., Comment by the Concerned Rural LECs, WC Docket 20-71 (July 6, 2020) p. 12 (“Concerned Rural LECs Comments”) (noting the administrative burden the proposed changes would place on rural ILECs); Comment by INCOMPAS, WC Docket 20-71 (July 6, 2020) pp. 2-3 (“INCOMPAS Comments”) (“INCOMPAS believes that the implementation would be very difficult for the industry. It will require significant time and resources Competitive local exchange carriers are concerned that explaining these changes to customers could also lead to more confusion Thus, INCOMPAS does not believe that any action is needed as there is not a problem here for the Commission to solve.”); Comment by the Cal. Pub. Utils. Comm’n, WC Docket 20-71 (July 6, 2020) p. 3 (“Removing telephone access charges from customer billing decreases transparency by hiding charges within local rates, undermining customer interests and protections as Commissioner O’Rielly noted.”). Cf. Comment by the Ad Hoc Telecom Users Comm., WC Docket 20-71 (July 6, 2020) p. 13 (“Ad Hoc Comments”) (stating that the “[e]limination of TACs makes sense,” but failing to identify any specific benefits to Carriers or consumers).

⁶ See, e.g., Comment by Neb. Pub. Serv. Comm’n, WC Docket 20-71 (July 6, 2020) p. 11 (“NE PSC Comments”); Comment by Pa. Pub. Util. Comm’n, WC Docket 20-71 (July 6, 2020), pp. 5-10.

⁷ See, e.g., Ad Hoc Comments, pp. 13-17.

⁸ See, e.g., INCOMPAS Comments, p. 3.

⁹ See, e.g., 47 U.S.C. § 152(b) (expressly barring FCC regulation “with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications service by wire or radio of any carrier,” except where Congress has clearly expressed an exception) (emphasis added); 47 U.S.C. § 251(d)(3) (preserving state access and interconnection oversight).

¹⁰ See, e.g., NPRM ¶¶ 46, 66-67 (proposing that in states that have deregulated the intrastate portion of their local voice service rates, carriers “can adjust the intrastate portion of the local rates to price their local voice services at market rates,” i.e., to include costs currently reimbursed through TACs).

intrastate caps. As customers cannot buy local exchange service without interstate access, Carriers could force Massachusetts customers to buy bundled service, despite the capped intrastate basic exchange rate. This risk results from the FCC's proposal no matter how charges are placed on the bill.

Similarly, as other commenters have noted would be the case in their states,¹¹ the proposed changes, by forcing Carriers to combine TACs with their local service charge, may make it more difficult for Carriers to comply with Massachusetts's truth-in-billing rules, which require customer bills to contain "a clearly labelled statement of regular monthly charges, taxes imposed on services, and toll calls."¹² The MDTC joins several commenters in opposing these potential violations of state authority over intrastate voice services.¹³

Finally, both the comments in this proceeding¹⁴ and the MDTC's own experience as a consumer resource for telecommunications questions and complaints suggest that there is currently little customer confusion about TACs. Both Massachusetts's price cap ILEC and its three rural rate-of-return ILECs charge customers the SLC and ARC. But from the start of 2018 through the first half of 2020, the MDTC recorded only 10 calls from consumers concerning a TAC on their voice service bills. This is out of at least 46,530 calls that the MDTC received from consumers during this period.¹⁵ Quite simply, the FCC is attempting to fix a transparency problem that does not exist.

¹¹ See, e.g., Comment by OH Telecom Assoc., WC Docket 20-71 (July 6, 2020), p. 6.

¹² In re NYNEX-New England Telephone Co., DPU 18448 (1977) Rule 3.4(f).

¹³ See *supra* note 6.

¹⁴ See, e.g., Concerned Rural LECs Comments, p. 9; NE PSC Comments, p. 2.

¹⁵ E-mails from Joslyn Day, Director, and Corey Pilz, Deputy Director, MDTC Consumer Division (July 15, 2020, 1:11 PM, 3:24 PM; July 16, 2020, 2:44 PM EST) (on file with author).

II. THE FCC SHOULD NOT IMPEDE CARRIERS' BUSINESS CHOICES BY PROHIBITING THEM FROM SEPARATELY LISTING TACS ON CUSTOMER BILLS.

The MDTC shares commenters' concerns that the NPRM's proposed changes would decrease price transparency for consumers.¹⁶ For customers of Carriers who choose to continue to charge one or more TACs, removing the TAC from the bill by including it in another line item reduces transparency. As other commenters have noted, competitive local exchange carriers generally simply match the local ILEC's TACs, belying the FCC's stated reasoning for prohibiting TACs to be charged on a separate line item: allowing customers to compare different providers' charges.¹⁷ Rather than prohibit Carriers from listing TACs as a separate line item on customer bills, the MDTC joins commenters¹⁸ in urging the FCC to simply specify a single term that carriers must use on their bills for these charges, singly and collectively, and a short explanation for each that providers must include on their bills if they choose to charge a TAC. This would provide customers with greater transparency about the components of their charges than would the FCC's proposal to ban TAC line items altogether.

III. THE FCC SHOULD DETERMINE THE EFFECT OF THE PROPOSED CHANGES ON THE FEDERAL USF AND CONDUCT A COST-BENEFIT ANALYSIS OF THE PROPOSED CHANGES.

Taken together, the changes proposed in the NPRM would remove the existing mechanism by which ILECs and many competitive Carriers have long identified revenues as either intrastate or interstate in order to determine their contributions to the USF and other programs.¹⁹ In its place, the NPRM proposes to allow Carriers to identify 25% of their total

¹⁶ See, e.g., Comments of INCOMPAS, p. 18; NE PSC Comments, p. 3.

¹⁷ See NPRM ¶ 63; Comment by NCTA – The Internet & Television Association, WC Docket 20-71 (July 6, 2020) p. 1.

¹⁸ Comment by CenturyLink, WC Docket 20-71 (July 6, 2020) pp. 15-17.

¹⁹ NPRM ¶ 77.

reportable revenues as interstate, regardless of the actual interstate share of those revenues, and seeks comment about ways to prevent Carriers from inappropriately shifting revenues to the intrastate classification in order to avoid contributing to these programs.²⁰ The MDTC joins other commenters who expressed concern over the lack of clarity both on the accuracy of the proposed safe harbor and on the effect of the proposed changes on USF funding.²¹ The FCC must analyze these issues and then, if it comes to the same conclusions, reissue its proposals with the necessary discussion and support.

The FCC's separations rules are based on the notion of "actual use."²² But the FCC has not provided any evidence that the proposed 25% safe harbor is based, even indirectly, on the actual share of TACs attributable to interstate services. Instead, the FCC indicates that it has based this proposal on TACs' relationship to "common line recovery" and notes that FCC regulations dictate that 25% of "common line costs" are designated as interstate.²³ But the FCC provides no indication that this 25% share of "common line costs" is based on actual use, either. In its prior establishment of separations safe harbors and similar apportionments of inter and intrastate costs, revenues, or infrastructure, the FCC has based such estimates on at least some actual use data.²⁴ In the absence of clear, new separations rules, the proposed detariffing and

²⁰ NPRM ¶ 83. The MDTC is concerned not only about the impact of the proposed changes on the federal USF, but also on the other important programs whose contributions are based solely on interstate revenues, such as the federal Telecommunications Relay Services Fund.

²¹ See, e.g., Concerned Rural LECs Comment, pp. 10-12; Comment by the Kan. Corp. Comm'n, WC Docket 20-71 (July 6, 2020) pp. 2-3.

²² See 47 C.F.R. § 36.2(a).

²³ NPRM ¶ 78.

²⁴ See, e.g., *In re Universal Service Contribution Methodology*, WC Docket No. 06-122, Report & Order & Notice of Proposed Rulemaking, FCC 06-94, ¶¶ 9, n.32, 10, n.34 (June 27, 2006) (describing the FCC's basing the calculation of a 15% interstate safe harbor for "cellular, broadband PCS, and digital SMR" on the nationwide average percentage for interstate wireline traffic carriers reported to the FCC and the 12% safe harbor for paging providers and the 1% safe harbor for analog SMR providers on revenue reported to the FCC, and its subsequent revision of the interstate share safe harbor for cellular, broadband PCS, and digital SMR revenue to 28.5% based on traffic studies of wireless carriers).

deregulating of TAC prices would make it impossible for any third party to determine the actual share of a Carrier's revenues that are derived from interstate service. The FCC's current reliance on Carriers' self-classification of wireline revenues between intrastate and interstate combined with Carriers' ability to use safe harbors to classify their VoIP and wireless revenues—which were put in place years ago and, even then, based on estimates—make it impossible for third parties to calculate precise historical intrastate/interstate revenue shares. Looking ahead, the combination of this continued lack of clear, updated separations rules and the NPRM's proposal to allow Carriers to use an admittedly imprecise safe harbor to classify wireline revenues would make it impossible for third parties to calculate the precise intrastate/interstate revenue shares in the future.²⁵ Together, it would be impossible to determine the effect of the proposed changes on the USF contribution base and, therefore, on the contribution factor necessary to maintain USF revenues if the FCC adopts its proposals. At a minimum, the MDTC joins commenters in urging the FCC to provide additional information about and analysis of the possible effects of the proposed changes on the USF contribution base and factor.²⁶ For example, one way of providing independent data on the current share of Carriers' wireline voice service revenues would be for the FCC to conduct its own traffic studies to update its estimates of the interstate share of local loop costs.²⁷

²⁵ See NE PSC Comments.

²⁶ See, e.g., Comment of the Multi-State RLEC Group, WC Docket 20-71 (July 6, 2020) p. 15; Comment of the USTelecom – The Broadband Association, WC Docket 20-71 (July 6, 2020) p. 17 (“At a minimum, the Commission must engage in additional analysis and obtain additional supporting documentation before approving any safe harbor in this proceeding.”).

²⁷ See NPRM ¶ 80 (permitting Carriers to turn to traffic studies, in an acknowledgement that the intrastate share of wireline revenues may well differ from that allowed by the proposed safe harbor, thereby altering a Carrier's USF contribution). Traffic studies conducted by carriers may be preferable to a safe harbor, but would not increase the transparency of Carriers' intrastate/interstate revenue shares. Rather, it should be the FCC conducting such studies, perhaps as part of the cost-benefit analysis suggested herein.

Even if the FCC's proposed safe harbor were accurate, the proposed changes might still have the effect of increasing the USF's contribution factor and shifting the contribution burden between different groups of voice service customers, based on their service's technology.²⁸ Under the NPRM's proposed changes, only 25% of TAC revenues would be classified as interstate. Currently, all TAC revenue is classified as interstate.²⁹ If Carriers maintain their current level of TAC charges, this change alone would reduce Carriers' total contributions to the federal USF, thereby necessitating an increase in the contribution factor to maintain the same level of USF revenues. If the proposed safe harbor for the interstate share of total Carrier revenues, 25%, is less than the share of the revenues Carriers would have identified as interstate under the current tariff requirements and price regulations, the proposed safe harbor would also decrease total USF contributions. In both cases the USF would have to increase its contribution factor in order to maintain the USF's balance. An increase in the factor would affect VoIP and wireless providers in particular, who would not have their assessed revenue changed under the NPRM.

It is also worth noting that Massachusetts consumers already pay significantly more into the federal USF than Massachusetts receives in benefits. In 2018, the most recent year for which data is available, Massachusetts businesses and consumers paid an estimated \$196,044,267 into the USF, but the Commonwealth and its residents received only \$54,263,000 from USF programs.³⁰ While Massachusetts is in the top half of states by per-capita USF contributions,

²⁸ NPRM ¶ 79 (highlighting that FCC rules for interstate allocations differ depending on the technology employed).

²⁹ FCC, 2020 Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, p. 40.

³⁰ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report – Data Received Through September 2019, CC Docket Nos. 96-45, at Table 1.9 (listing the annual payments and contributions, in thousands, by state for 2018) (2019 Monitoring Report).

Massachusetts receives less support from the USF than all but one other state.³¹ This discrepancy will likely increase over the next decade as virtually all new USF programs focus on rural areas.³² Any increase in the USF contribution factor, including the potential increases described above, assuming no change in USF benefits, would only serve to exacerbate the discrepancy between what Massachusetts contributes to the USF and what Massachusetts receives from it.

Finally, the MDTC is also concerned that Massachusetts wireline Lifeline subscribers, who have a limited choice of providers, would face higher prices as a result of the NPRM's proposed changes if Carriers fold TACs, which Lifeline subscribers do not currently pay, into other portions of Lifeline customers' bills.

In short, the FCC's proposals are fraught with several unexplained unknowns as it comes to USF impacts. The FCC has a duty to study these issues by conducting a cost-benefit analysis on the impacts of its proposals and any purported benefits. If it then reaches the same conclusions, the FCC can reissue its proposals with the necessary analysis and support.

IV. IF THE FCC REMOVES *EX ANTE* PRICING REGULATION AND REQUIRES DETARIFFING OF TACS, IT SHOULD EITHER DO SO PERMISSIVELY OR APPLY SUCH NEW RULES ONLY TO STATES WHICH HAVE FULLY DEREGULATED THE INTRASTATE PORTION OF LOCAL VOICE SERVICES.

³¹ Calculated from Federal-State Joint Board on Universal Service, Universal Service Monitoring Report – Data Received Through September 2019, CC Docket Nos. 96-45, at Table 1.9 (listing the annual payments and contributions, in thousands, by state for 2018) (2019 Monitoring Report) and U.S. Census Bureau, Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2018 <https://www.census.gov/newsroom/press-kits/2018/pop-estimates-national-state.html>.

³² See, e.g., *In re Rural Digital Opportunity Fund*, WC Docket No. 19-126, Report and Order (Feb. 7, 2020); *In re Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Notice of Proposed Rulemaking and Order (Apr. 24, 2020).

The NPRM seeks comment on whether the FCC should retain existing *ex ante* pricing regulation and tariffing in those states that have not deregulated the intrastate portion of local voice service rates.³³ For the reasons described in Section I *supra*, the MDTC joins commenters in encouraging the FCC to either limit such TAC detariffing and price deregulation to those states that have fully deregulated local voice service rates, or make such detariffing optional at carriers' discretion.³⁴ Either option would avoid the administrative burdens on carriers, the undue impacts on state authority and USF funding, and the consumer confusion that the MDTC and other commenters believe will be particularly problematic in states that continue to exercise authority over intrastate voice service charges.

V. CONCLUSION

The MDTC urges the FCC to refrain from implementing the proposals contained in the NPRM to detariff and deregulate the price of TACs and to prohibit Carriers from passing TACs to their customers through separate line items on customer bills. While the MDTC sees few, if any, benefits to these proposals, the MDTC joins commenters in believing that the proposed changes would place significant administrative burdens on Carriers, confuse consumers, and change USF contributions in ways that would be harmful to Massachusetts consumers. If the FCC moves forward with detariffing and price deregulation, either prior to or after the cost-benefit analysis described above, the MDTC urges the FCC either to make the changes permissive or to limit the changes to states that have fully deregulated local voice service prices.

³³ NPRM ¶ 53.

³⁴ See Comment by NTCA-The Rural Broadband Association, WC Docket 20-71 (July 6, 2020) pp. 12, 22.

Respectfully submitted,

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