

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-100, SUB 167

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition of Sprint to Reduce Intrastate) ORDER DENYING COMPSOUTH
Switched Access Rate of Incumbent) AND NCCTA ABEYANCE MOTION
Local Exchange Carriers in North Carolina) AND EXTENDING DIRECT
) TESTIMONY DISCOVERY WINDOW

BY THE CHAIRMAN: On August 3, 2011, the Competitive Carriers of the South, Inc. (CompSouth) and the North Carolina Cable Telecommunications Association (NCCTA) (collectively, Movants) filed a Motion to Hold Proceeding in Abeyance Pending FCC Consideration of Pending Reform Plans and Request for Expedited Consideration. On August 4, 2011, CompSouth and the NCCTA filed a Supplement to the above Motion. Attached to the Supplement was a Public Notice of the Federal Communications Commission (FCC) entitled "Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding in which the FCC sought comment on various approaches." Among those approaches submitted to the FCC was one entitled "America's Broadband Connectivity Plan" (ABC Plan) applicable to price-cap carriers. Another was the ABC Plan applied to rate-of-return carriers. The ABC Plans would, among other things, have the FCC assert federal jurisdiction over intrastate access rates under Section 251(b)(5) and other provisions.

The Movants noted that direct testimony in the above docket is due on August 10, 2011, which is prior to the date that comments will be due in the FCC proceeding on the ABC Plans. Aside from reluctance of parties to take positions in a state proceeding that may be adverse to positions taken at the federal level, the Movants warned of the possible preemptive effect of the federal proceeding and argued that parties should be given the opportunity to fully evaluate the federal proposals before being forced to articulate potentially binding positions on the same issues in a parallel state proceeding. If the Commission were to proceed, it may well be forced to reconsider its action in this proceeding if it acts in a manner that is inconsistent or different from an FCC Order. Accordingly, Movants requested that the Commission issue an Order holding this proceeding in abeyance until December 2011 or until the FCC has had an ample opportunity to take action on the various universal service and intercarrier compensation reform proposals before it.

On August 5, 2011, an Order Seeking Comments on CompSouth and NCCTA Motion and Changing Direct Testimony Due Date was issued in this docket. The Order gave the other parties to this docket the opportunity to respond to Movants' Motion by no later than August 11, 2011. Since prefiled direct testimony in this docket was

scheduled for August 10, 2011, the Order also provided that the date for prefiled direct testimony in this docket was to be changed to Thursday, August 18, 2011.

COMMENTS

The **Public Staff** opposed the CompSouth and NCCTA Abeyance Motion, characterizing such action pending “some unspecified FCC action at some uncertain time” as unnecessary and unwarranted. The Public Staff pointed out that, even if the FCC did act to preempt the jurisdiction of the states over intrastate switched access rates, there could be legal challenges that might not be settled for several years. Even if the FCC were to move more quickly than it has in the past, there is no assurance that there would be a timely resolution of the issues or that FCC’s decision would necessarily moot the issues in this docket. Indeed, if the FCC adopted the State Plan, the states would be given the task of reforming intrastate rates, and proceedings in this docket could actually dovetail with the FCC actions. Finally, the Public Staff noted that this docket has been underway for almost two years. The Access Charge Working Group has submitted its report; an evidentiary hearing has been scheduled; and an array of issues are ripe for decision. While the Commission should certainly monitor the FCC’s dockets, at this point in time, holding the docket in abeyance pending unknown FCC action at some uncertain time is inadvisable.

The **ILEC Coalition** also opposed the CompSouth and NCCTA Abeyance Motion, arguing that it was premature to arrest the Commission’s proceeding at this point. The FCC’s *Public Notice* shows that the FCC has not foreclosed states from continuing to play an active role in intercarrier compensation and universal service reform. The FCC may issue a final order maintaining some level of state authority over intrastate switched access reform, but the timing is uncertain. Depending on the timing and substance of an FCC decision, it is possible that the Commission would be able to reconcile the FCC result with its own decision.

Finally, since the CompSouth and NCCTA Motion has already led to a slight delay in the procedural schedule, the ILEC Coalition requested that the discovery window commencing after the filing of Direct Testimony be extended until August 31, 2011.

Sprint Communications Company L.P, Sprint Spectrum L.P, and Nextel South Corp. (collectively, Sprint) argued that there is no reason to delay these proceedings. Sprint further noted that the FCC Staff in the National Broadband Plan issued in 2010 stated that, while elimination of high per-unit intercarrier compensation is the ultimate goal, Congress may need to amend current law to make clear that the FCC has the requisite authority to adjust intercarrier rates. Even if the FCC found that it had the requisite authority on its own, that decision would surely be challenged in the courts. At the present time, in contrast, regulation of North Carolina intrastate access charges is clearly within the Commission’s purview pursuant to G.S. 62-133.5(j). Lastly, it should be recalled that CompSouth’s position that the Commission should defer to the federal process is not new. In the Final Report of the Access Charges Working Group

CompSouth, together with tw telecom, argued that “[t]he Commission should allow the federal process to unfold before attempting to address intrastate access in isolation...That process should be permitted to proceed before the NCUC looks a what other policies are appropriate.” Nevertheless, the Commission chose to go forward and established a procedural schedule for its consideration of intrastate access rates in North Carolina.

T-Mobile South LCC d/b/a T-Mobile (T-Mobile) filed brief statement saying that it did not object to the granting of the CompSouth/NCCTA Motion to hold this proceeding in abeyance.

CONCLUSIONS

After careful consideration, the Chairman concludes that good cause exists to deny CompSouth’s and the NCCTA’s Motion to hold this docket in abeyance for the reasons noted by the opponents of that Motion.

Furthermore, pursuant to the ILEC Coalition’s suggestion, the Chairman concludes that the second sentence of Item 4.a. of the Procedural Schedule and Guidelines of June 3, 2011, should be amended to read: “Discovery on direct testimony shall begin on August 11, 2011, and shall be served by August 31, 2011.”

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of August, 2011.

NORTH CAROLINA UTILITIES COMMISSION



Renné Vance, Chief Clerk