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April 11, 2012

**Via Electronic Filing**

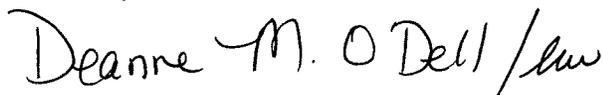
Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: Implementation of the Federal Communications Commission's Order of November 18, 2011 As Amended or Revised and Coordination with Certain Intrastate Matters, Docket No. M-2012-2291824

Dear Secretary Chiavetta:

On behalf of the Full Service Network, L.P. enclosed please find the original of its Comments along with the electronic filing confirmation with regard to the above-referenced matter.

Sincerely,



Deanne M. O'Dell

DMO/lww  
Enclosure

cc: RA-PUCTelco@pa.gov w/enc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of the Federal Communications :  
Commission’s Order of November 18, 2011 As : Docket No. M-2012-2291824  
Amended Or Revised And Coordination With :  
Certain Intrastate Matters :

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**COMMENTS OF  
FULL SERVICE NETWORK, L.P.**

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**I. INTRODUCTION**

By Opinion and Order entered March 22, 2012, the Commission opened this proceeding to afford all interested stakeholders the opportunity to present appropriate information and material regarding the Commission’s implementation of the directives of the Federal Communications Commission (“FCC”) in its November 18, 2011 Report and Order and Further Notice of Proposed Rulemaking.<sup>1</sup> Specifically, the Commission asked for input about the “use of a properly designed informal dispute resolution processes with or without the involvement of Commission staff.”<sup>2</sup> As explained further below, Full Service Network, L.P. (“FSN”) recommends that the Commission’s current Abbreviated Dispute Resolution Process (“ADRP”) be established as a formal, expedited process to address intercarrier compensation disputes including those related to both intrastate access charges and reciprocal compensation. Currently, small carriers – such as competitive local exchange carriers (“CLECs”) and rural incumbent local exchange carriers (“RLECs”) – seeking compensation from other non-paying CLECs or wireless carriers for services rendered only have the choice of embarking upon lengthy and costly litigation for redress while being forced to continue to provide their services for free

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<sup>1</sup> *In the Matter of Connect America Fund et al.*, Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC No. 11-161, released November 18, 2011.

<sup>2</sup> Tentative Order at 5.

pending the outcome. Such process is unfair in that it provides a competitive advantage to the non-paying company because it receives the benefit of free services from its competitor. ADRP presents a very attractive and reasonable solution to this problem because it is a formal, expedited Commission process which makes clear that the Commission will not tolerate gamesmanship from carriers seeking a “free ride” on the networks of their competitors.

## **II. COMMENTS**

Full Service Network, L.P. (“FSN”) is a privately-held company which was created in Pittsburgh, Pennsylvania in 1988 as a long distance reseller serving only business accounts following the divestiture of AT&T. In 1999, FSN entered the local telecommunications market. Over time, FSN installed its own network facilities and expanded its corporate structure and today provides a complete range of services including long distance, toll-free service, calling cards, internet and local telephone services. Over the years, FSN has gained significant experience regarding intercarrier compensation disputes that can arise with all types of carriers including incumbent local exchange carriers (“ILECs”), CLECs and wireless carriers.

### **A. Smaller Carriers Lack Any Cost-Efficient And Timely Tools To Require Carriers To Pay For Services Rendered**

In a traditional commercial setting, businesses are not forced to provide service to other businesses for free. In fact, if a business fails to pay another for services rendered, the business providing the service has the right – usually through a contract – to cease providing the service. Even public utilities have the right – pursuant to the law and Commission regulations – to terminate service to a retail customer who fails to pay his or her bills.<sup>3</sup> The ability to terminate service for non-payment is important to ensure that providers of service are either: (1)

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<sup>3</sup> 52 Pa. Code §§ 64.61-64.111.

compensated for their costs to provide service; or, (2) not required to continue to provide services for which they will not be compensated.

Regarding intercarrier compensation disputes between telecommunications carriers, however, the general rule pursuant to both state and federal law is that telecommunications carriers cannot cease providing service to other telecommunications carriers based on a payment dispute.<sup>4</sup> While the reason for this prohibition – to prevent stopping the flow of telecommunications traffic over a intercarrier payment dispute – is laudable, the impact of the rule has not been equally applicable to all carriers.

From the ILEC's perspective, the general rule has not hampered its ability to ensure that it receives payment from other carriers because it has been given other powerful ways to leverage its ability to terminate services. One is the fact that the Commission has recognized that right of carriers with interconnection agreements may be able to cease providing service upon a failure to pay.<sup>5</sup> This is a valuable tool for an ILEC who has the vast resources and capacity needed to develop and negotiate ILEC favorable interconnection agreements with other carriers and to easily exercise all enforcement rights. In addition, the Commission's regulations permit telecommunications companies to terminate wholesale service to carrier customers for nonpayment.<sup>6</sup> In practical application, these regulations allow an ILEC to terminate wholesale services to CLECs even when that termination of service will result in the loss of service to the

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<sup>4</sup> See, Declaratory Ruling & Order, *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers—Call Blocking by Carriers*, WC Docket No. 07-135, 22 FCC Rcd. 11629, 2007 WL 1880323 (F.C.C.)(June 28, 2007), at ¶¶ 5-6; and, Opinion and Order, *Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company*, Pa. P.U.C. Docket No. C-20028114 (Aug. 8, 2002), at 9 (“all carriers are obligated to complete calls where it is technically feasible to do so regardless of whether they believe that the underlying intercarrier compensation arrangements for completion of calls are proper.”) (Emphasis added).

<sup>5</sup> *Buffalo-Lake Erie Wireless Systems Col, LLC Petition for Emergency Order*, Docket No. P-2009-2150008, Emergency Order at 3, ratified by Ratification Order entered January 14, 2010.

<sup>6</sup> 52 Pa. Code § 63.304(a).

CLEC's customers.<sup>7</sup> Like the ability to utilize a well-crafted interconnection agreement to enforce payment through threat of termination, ILECs are generally the carriers most able to take advantage of these regulations (as the primary wholesale providers) to permit them to timely and cost efficiently terminate services upon nonpayment.

For smaller carriers, the general rule has devastated their ability to ensure that they receive payment from other carriers for services rendered because CLECs do not have any cost efficient, timely or reasonable way to pursue termination of services for non-payment. With many parties (e.g. wireless carriers, interexchange carriers, and other CLECs), CLECs do not enter into interconnection agreements pursuant to the Telecommunications Act of 1996<sup>8</sup> with parties other than the ILEC in whose area they provide service and have no way of forcing other companies to enter into such agreements (or, for that matter, any contractual agreement).<sup>9</sup> Yet, for the CLEC to enter the market it must exchange traffic with these other parties. Likewise, there are no regulations or processes available for smaller carriers to implement a termination of services for non-payment of intercarrier compensation or other wholesale services with these other parties. Because of this, smaller carriers are required to continue to provide services to the non-paying carrier and to try to recover payment through the legal process. Unfortunately, that subjects the smaller carriers to a battle of attrition where the deepest pockets prevail all the while

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<sup>7</sup> See, e.g., *Application of Remi Retail Communications, LLC for Approval of the Abandonment or Discontinuance as a Statewide Reseller of Interexchange Toll Carrier Services and as a Competitive Local Exchange Carrier Serving Customers in the Service Territories of Verizon Pennsylvania Inc. and Verizon North Inc.*, Docket Number A-2008-2019752, Application to Abandon Service and Abandonment Plan filed on January 18, 2008 at 1 (“Remi received notice from its underlying network service providers . . . Verizon that . . . it will terminate wholesale services provided to Remi on or after February 19, 2008. As Remi utilizes Verizon as its sole underlying network service provider . . . for all Pennsylvania local service customers through a variety of UNE-P, UNE-L, resale and access service arrangements, termination of these services prevents Remi from continuing to provide service to its current 351 business customers in Pennsylvania.”)

<sup>8</sup> 47 U.S.C. § 252.

<sup>9</sup> *Developing a Unified Intercarrier Compensation Regime, T-Mobile, et al., Petition for a Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, Declaratory Ruling and Report and Order. FCC 05-42, February 24, 2005

the larger carrier enjoys a free ride on the smaller carrier's network. As explained further below, the current legal options that exist for smaller carriers do not provide a reasonable way for most smaller carriers to receive payment for services rendered and this is why FSN recommends that the Commission expand its current ADRP to cover intercarrier compensation disputes.

**B. The Current Legal Processes Available To Collect Payment For Services Rendered Is Inadequate for Most Smaller Carriers**

For smaller carriers who are providing services to other carriers, the legal options to pursue non-payment are costly, time consuming and – because of the general rule – during the litigation the smaller carrier must continue to provide the services for free. If the non-payor is a wireless carrier, the potential forums are the FCC or perhaps the Commission (for Intra-MTA although the question of the Commission's jurisdiction in this regard is currently being litigated<sup>10</sup>) and federal district court for inter-MTA traffic. If the non-payor is a CLEC, then the smaller carrier seeking payment can pursue action at the Commission. At this time, the only “formal” route for pursuing a non-paying CLEC is a fully litigated formal complaint proceeding. These proceedings can be extremely costly and time-consuming. In FSN's experience, a larger carrier with significant resources and capacity can easily delay timely resolution of a formal complaint proceeding while forcing the smaller carrier seeking payment to: (1) incur additional legal expenses; and, (2) continue to perform the services for which it is not getting paid for free. Most smaller carriers are unlikely to choose to incur even more costs beyond the free services they are being forced to provide to the non-payor carrier. Further, depending on the carriers involved, the non-paying carrier could have significantly greater resources and fully understands how to utilize procedural or other tactics to intentionally force the smaller carrier seeking

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<sup>10</sup> *Consolidated Communications Enterprise Services, Inc. v. Omnipoint Communications, Inc. d/b/a T-Mobile, et al.* Docket No. C-2010-2210014, Opinion and Order entered March 15, 2012.

payment to incur significant legal costs. Then, even if the result is unfavorable, the non-paying carrier can still pursue an appeal adding additional years through which it receives free service. The net result of this is a process which unfairly shifts costs from one competitor to another. The smaller carrier who is providing the services for free must continue to provide the services for free (or take the risk of spending even more money to try to collect payment) while the carrier receiving the service is not required to expend its own financial resources to receive the benefit of the service. Thus, the carrier receiving the free service is provided a unfair competitive advantage that often extends over the course of many years.

**C. The Commission Should Permit Smaller Carriers to Utilize ADRP For Intercarrier Compensation Disputes**

As explained above, smaller carriers seeking payment for services rendered are currently disadvantaged in the avenues available to them to pursue non-payors. For this reason, FSN recommends that the Commission take whatever action deemed necessary to make clear that smaller carriers may use its current ADRP process to resolve intercarrier compensation disputes. ADRP was first implemented by the Commission's *Global Order*<sup>11</sup> on an experimental basis to determine if the guidelines would further the Commission's mission to promote competitive markets by expediting resolution of certain disputes between competing telecommunications carriers. The guidelines were revised twice to make the process more efficient and to better fulfill its purpose.<sup>12</sup> During the last review of ADRP, in 2005, the Commission determined that

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<sup>11</sup> *Joint Petition of Nextlink, et al., and Joint Petition of Bell Atlantic, et al.*, Order (entered Sep. 30, 1999), Docket Nos. P-00991648 and P-00991649 ("*Global Order*"). The process was set forth in Appendix E of the *Global Order*.

<sup>12</sup> *Id.*, Order (entered July 13, 2000). See also *Interim Guidelines for Abbreviated Dispute Resolution Process*, Docket No. M-00021685, Final Order Reinstating Abbreviated Dispute Resolution Process entered August 31, 2005

ADRP furthered “the Commission’s goal of providing an expedited path for resolution.”<sup>13</sup> While the Commission directed that a proposed rulemaking order be issued to codify ADRP, to FSN’s knowledge no rulemaking order has been issued.

FSN is a strong supporter of ADRP because it provides a formal, expedited process to resolve disputes. Technically, non-paying carriers have a right to pursue legal action, but there is a dire need for processes that help to shorten the timeline for such rearguard tactics. While mediation is a valuable tool for carriers who are sincerely trying to reach a resolution of a dispute, such is likely not the case in the situation described here. Rather, one carrier – the non-payor – is incentivized not to resolve the dispute because such resolution is likely to result in requiring it to pay something where before it paid nothing. In consideration of this, a non-paying carrier is likely to view mediation as just another way to prolong resolution which works to its advantage. In these circumstances, mediation will not bring about a fair result.

At the other end of the spectrum is full litigation. As explained above, the formal complaint proceedings can be extremely expensive and time consuming. Again, the non-paying carrier is incentivized to delay resolution of the proceeding because it continues to receive the advantage of not paying for services being rendered during the pendency of the proceeding. Also, telecommunications carriers are a varied bunch of companies and, if the non-paying carrier has significantly more resources than the carrier seeking payment, a formal litigation process before the Commission presents numerous opportunities to force the complainant to expend significant resources. Thus, a formal complaint process (during which the carrier must continue to provide its services for free) really does not provide a carrier seeking payment with a cost-efficient and timely way to pursue its rights.

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<sup>13</sup> *Interim Guidelines for Abbreviated Dispute Resolution Process*, Docket No. M-00021685, Final Order Reinstating Abbreviated Dispute Resolution Process entered August 31, 2005.

ADRP provides a very attractive and reasonable solution to this situation for a number of reasons. First, ADRP is a formal process which means that the carriers involved will receive a binding, final decision from the Commission. This is an important check for ensuring that carriers comply with the law. Second, ADRP provides an expedited process. This minimizes the ability of a carrier to try to delay the process and cause the other party to incur significant expenses. It is also important from the perspective of the carrier who is forced to continue to provide its services for free during the pendency of the action. Requiring these carriers to provide services – sometimes for years – during a formal complaint proceeding can have serious negative consequences to their overall business. Finally, the existence of ADRP – even if it is never utilized – is an important negotiating tool and can act as a deterrent to non-payment. Non-paying carriers who realize that the Commission will enforce the rules and has implemented an ADRP process to provide a timely and cost-efficient way to enforce these rules are likely to be more willing to engage in good faith negotiations to resolve disputes. On the other hand, carriers who determine that a carrier seeking payment will not have the time or resources to pursue full litigation while they continue to not pay for services rendered are more likely to be unwilling to negotiate in good faith.

FSN generally supports ADRP as it is set forth in the currently effective guidelines. However, FSN would suggest that the issue of applicability of ADRP to intercarrier compensation disputes be clarified. In 2004, an Initial Decision was entered which concluded that the dispute between the parties was “a garden-variety billing dispute” which was not appropriate for ADRP.<sup>14</sup> Subsequently, Verizon – which initiated ADRP – filed a formal complaint. Thus, on exceptions, the Commission concluded that the issue of whether or not the

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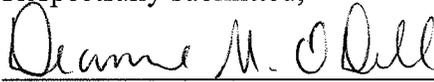
<sup>14</sup> *Petition of Verizon Pennsylvania Inc. for Resolution of a Dispute with CTSI, LLC Pursuant to the Abbreviated Dispute Resolution Process*, Docket No. P-00042088, Initial Decision dated April 20, 2004.

dispute was properly in ADRP was “moot.”<sup>15</sup> In this proceeding, the Commission should be clear that ADRP is available for intercarrier compensation disputes as such clarity is necessary to ensure that the benefits of ADRP are realized.

**III. CONCLUSION**

FSN appreciates this opportunity to provide these comments regarding the Commission’s implementation of the FCC’s intercarrier compensation order and looks forward to participating as appropriate to address any issues or concerns as they may arise.

Respectfully submitted,



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Date: April 11, 2012

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<sup>15</sup> *Id.*, Opinion and Order entered July 9, 2004 at 10.