

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

REPLY COMMENTS OF INCOMPAS

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I. INTRODUCTION AND SUMMARY

INCOMPAS, by its undersigned counsel, hereby submits these reply comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) Notice of Proposed Rulemaking (“NPRM”) regarding eliminating *ex ante* pricing regulation and tariffing of telephone access charges (“TACs”)¹.

INCOMPAS’ comments and the record in this proceeding clearly demonstrate that, while well-intentioned, the Commission’s proposal to mandate the elimination of federal TACs would result in various and significant harms to providers and customers.² For example, eliminating interstate TACs would: (1) be effectively unworkable in the many areas in which states regulate basic local telephone service rates; (2) force service providers to incur costly billing system changes at a time when they are already experiencing lower revenues and higher costs associated with the economic consequences of the COVID-19 pandemic; (3) likely create, rather than reduce, customer confusion by ending the well-established, easily understood system for access

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

² See Comments of INCOMPAS, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020) (“*INCOMPAS Comments*”).

fees; (4) introduce uncertainty and likely harm to state and local USF subsidy regimes; and (5) overall be subject to serious legal uncertainty. As a result, the Commission should decline to adopt the proposal in its NPRM anywhere in the country.

II. THE RECORD SHOWS THAT THE VAST MAJORITY OF COMMENTERS AGREE THAT THE FCC'S CURRENT PROPOSAL IS PROBLEMATIC AND WILL LEAD TO VARIOUS HARMS.

The overwhelming majority of comments filed in this proceeding caution against the FCC's current proposal. Out of the 22 comments filed in this proceed, 17 commenters do not think the FCC should move forward with its current proposal. Only five commenters expressed support for the FCC moving forward with its proposal, and even the majority of these comments still cautioned the FCC about aspects of its proposal. INCOMPAS, as well other others in the record, are very concerned about the all the potential harms if the FCC moves forward with its proposal.

(a) The Record Shows That The Commission's Proposal Would Make Cost Recovery Either Impossible Or Procedurally Burdensome In Many States.

As expressed in INCOMPAS' comments and almost all the comments in this proceeding, the various state regulatory requirements will ultimately impact the ability of carriers to recover their costs.³ INCOMPAS, along with many other commenters, are concerned with the Commission moving forward with its proposal when many states still have price caps on local rates—leaving many carriers without the ability to recover the revenues lost upon removing their federal TACs.

As the record shows, many states have adopted limited price flexibility for carriers, which either means carriers will not be able to recover their costs or it will be a procedural

³ See *INCOMPAS Comments*, at 3-8.

nightmare to do so. Various organizations and state commissions in this proceeding explained the fact that many carriers would not be able to recover the lost revenues:

- According to the New York Public Service Commission, “there is no legal mechanism in New York for the [ILECs] to recover their lost interstate revenues through increases to intrastate rates.”⁴
- According to NTCA, there are “a number of jurisdictions where providers do *not* have full and unfettered discretion to increase local service rates as they may want.”⁵
- As explained by the Concerned RLECs, “[t]he NPRM’s assertion that local rates can be easily adjusted to incorporate [TACs] is inaccurate for many RoR ILECs because many states continue to regulate RoR ILECs’ local rates,” which it then supported with examples of nine states that do so.⁶
- The Multistate RLEC Group discussed how the “suggestion that sufficient intrastate voice services pricing flexibility exists to address the transfer of the entirety of interstate recovery to local rates is unsupported by the facts and will not readily support recovery of lost revenues caused by the ‘proposed detariffing[.]’”⁷
- According to the Ohio Telecom Association, “[l]ike many states, Ohio has substantially revised its regulation of telecommunications services, but it retains price cap regulation for basic local exchange service . . . therefore, [ILECS] are at risk for substantial revenue losses.”⁸

⁴ Comments of the New York Public Service Commission, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020) (“*NYPSC Comments*”), at 2.

⁵ Comments of NTCA—The Rural Broadband Association, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020) (“*NTCA Comments*”), at 4.

⁶ Comments of The Concerned Rural LECs, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020) (“*Concerned RLECs Comments*”), at 1-2, 4-5.

⁷ Comments of The Multi-State RLEC Group, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020) (“*The Multi-State RLEC Group Comments*”), at 4-5.

⁸ Comments of the Ohio Telecom Association, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020) (“*Ohio Telecom Association Comments*”), at 4.

- In addition, as expressed by Zingaretti Enterprises, the Commission’s NPRM identified Pennsylvania as a state that has adopted retail rate flexibility for the intrastate portion of local services, but this pricing flexibility only applies to Verizon and only in a limited fashion. In fact, the Pennsylvania RLECs “do not have the type of intrastate pricing flexibility that would allow the significant *intrastate* rate increases proposed in this NPRM. This is the case regardless of whether the customer’s *total* bill might remain unchanged.”⁹

Other commenters explained the procedural difficulties to recover any lost revenue:

- As explained by USTelecom, “considerable variation will often prevent [ILECs] from recovering through their retail rates the revenues lost through the elimination of the [TACs]. Even where [ILECs] can do so, the only way to change these rates is through lengthy regulatory proceedings, which may take years to accomplish, in which they are likely to face opposition from state public utility commissions[.]”¹⁰
- According to NTCA, “many RLECs do not enjoy significant ‘rate flexibility’ at the state level – many in fact face the prospect of rate cases or similarly burdensome proceedings as part of any effort to increase local service rates to recover the costs that will be shifted from the interstate jurisdiction under this proposal.”¹¹
- The California Public Utilities Commission (“CPUC”) described similar concerns by stating that certain rate-of-return carriers in its state “do not have the rate flexibility to combine the interstate access charges with local intrastate basic service rates without requesting such approval through a time-consuming formal proceeding.”¹²
- The Alabama RLECs explained that the Commission’s “assumption that such a shift can be accomplished in all states is incorrect” and explained how “Alabama provides

⁹ Comments of Zingaretti Enterprises, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020) (“Zingaretti Enterprises Comments”), at 4.

¹⁰ Comments of USTelecom—The Broadband Association, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020) (“USTelecom Comments”), at 6.

¹¹ *NTCA Comments*, at ii.

¹² Comments of the California Public Utilities Commission, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020) (“CPUC Comments”), at 2.

a good example of the complexity of some state regulatory regimes applicable to rural ILECs.”¹³

- As explained by the Kansas RLECs, “the process in Kansas for determining such a different rate is an approximately eight-month long traditional rate of return regulation ‘rate case,’ . . . which requires extraordinary additional costs to a company . . . with no guarantee the KCC would find that any individual RLEC residential or single business line rate should be increased by the \$9.50 per month loss each line would now experience under the Commission’s proposal.”¹⁴
- According to the Small Company Coalition, “[i]t 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.”¹⁵
- Even the Puerto Rico Telephone Company, which generally supports the Commission’s proposal, expressed concern that under Puerto Rican laws and regulations it “may have to expend considerable time and effort to gain approval for any such change, and with no guarantee as to when or whether its proposed changes will be in effect.”¹⁶

(b) The Record Shows Significant Concerns Regarding The Commission’s Jurisdictional Authority To Implement Its Proposal.

The record shows the concerns that many commenters have with jurisdictional issues between the FCC and the states. INCOMPAS’ comments expressed concern that the Commission has not demonstrated why the preemption of states’ long-standing jurisdiction over

¹³ Comments of the Alabama Rural Local Exchange Carriers, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020) (“Alabama RLECs Comments”), at 2.

¹⁴ Comments of Kansas Rural Local Exchange Carriers, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020) (“Kansas RLECs Comments”), at 2.

¹⁵ Comments of the Small Company Coalition, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020) (“The Small Company Coalition Comments”), at 5.

¹⁶ Comments of Puerto Rico Telephone Company, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020) (“Puerto Rico Telephone Co. Comments”), at 5.

customer billing practices is necessary, and therefore legally sustainable, in order to achieve the NPRM's goals.¹⁷ Similarly, others in the record have cautioned against the jurisdictional authority of the FCC and, in some cases, the states' authority to implement a mandatory detariffing proposal:

- According to the Kansas Corporation Commission, “[t]he FCC should clarify how detariffing and deregulating the TACs affects the Part 36 Separations process and does not erode jurisdictional separations.”¹⁸
- Similarly, the Kansas RLECs “do not believe any authority exists in Kansas law for the KCC to create line item charges not already specifically authorized by Kansas law or the FCC[.]”¹⁹
- NTCA expressed concern of separations issues by explaining that “if the only way cost carriers can then recover these *interstate* costs is through an *intrastate* rate increase, the *NPRM* is shifting costs to the intrastate jurisdiction in violation of the separations process.”²⁰
- According to JSI, “[t]he NPRM fails to recognize that it is changing jurisdictional separations policies without a full examination of the potential impacts on the industry” and it too brought up the importance of adhering to jurisdictional separations and Part 36 of the Commission’s regulations.²¹
- In fact, the Pennsylvania Public Utility Commission (“PA PUC”) argued that “the FCC lacks the legal authority to jurisdictionally ‘reclassify’ or ‘redefine’ the federal [TACs] and ‘attach’ or ‘move’ them in an arbitrary and unilateral fashion to intrastate regulated local service rates.”²²

¹⁷ *INCOMPAS Comments*, at 6-8.

¹⁸ Comments of Kansas Corporation Commission, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed June 30, 2020), at 1.

¹⁹ *Kansas RLECs Comments*, at 3.

²⁰ *NTCA Comments*, at 16-17.

²¹ Comments of JS, LLC, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020) (“*JSI Comments*”), at 4-5.

²² Comments of the Pennsylvania Public Utility Commission, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020) (“*PA PUC Comments*”), at 6-7.

- Similarly, the Nebraska Public Service Commission argued that the Commission’s proposal to preempt state law encroaches on the authority expressly reserved to the states, and that it “does not believe the Commission has the authority or the justifiable basis to preempt state law relative to how these charges are identified on the bill.”²³
- Moreover, according to the New York Public Service Commission, in New York, “intrastate revenue requirements and cost-of-services are developed by relying, in part, on the FCC’s separations rules.”²⁴

(c) The Record Shows That The Commission’s Proposal Would Be Incredibly Burdensome For Carriers, Especially During The COVID-19 Pandemic.

The Commission’s proposal would lead to a significant amount of work for both incumbent and competitive carriers. As expressed in INCOMPAS’ comments, all the steps necessary for carriers to comply with the new regulations would require significant time, money, and resources, as well as a tremendous implementation effort and inevitable problems that will arise. This sentiment has been amplified in the record:

- According to CPUC, “the detariffing proposal will cause considerable burden on the carriers and on the state[.]”²⁵
- According to the Puerto Rico Telephone Company, “these adjustments also will require introducing complex and technically challenging billing procedures” in the context of USF contributions.²⁶

²³ Comments of Nebraska Public Service Commission, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020) (“*NPSC Comments*”), at 11-12.

²⁴ *NYPSC Comments*, at 2.

²⁵ *CPUC Comments*, at 2.

²⁶ *Puerto Rico Telephone Co. Comments*, at 7.

- WTA explained that it is not aware of any customer dissatisfaction with the TACs, and that the NPRM’s proposals are likely to “stir up dissatisfaction, complaints, and needs for increased customer education among a segment of rural customers.”²⁷

In addition, the Commission’s proposal will place an even heavier burden on carriers as they maneuver through the COVID-19 global pandemic:²⁸

- According to the Nebraska Public Service Commission, the adoption of the NPRM’s proposals would be “disruptive for carriers” and would also place carriers and state commissions in the position of having to raise basic local rates “in the midst of a global pandemic.”²⁹
- As WTA explained, the uncertainty of cost recovery “is extremely counter-productive and de-stabilizing during a period when Rural LECs need every available dollar to extend and upgrade their broadband networks and to cope with the disruptions of the COVID-19 pandemic.”³⁰
- Moreover, NTCA warned the Commission to be aware that this proceeding is not occurring in a vacuum, but rather at a time when carriers are “navigating completely novel issues related to the COVID-19 pandemic[.]”³¹

(d) The Record Shows That The Commission’s Proposal Will Likely Increase Consumer Confusion and Decrease Transparency.

While INCOMPAS and others agree with the Commission’s goals of decreasing consumer confusion and increasing billing transparency, the record shows that the Commission’s

²⁷ Comments of WTA—Advocates for Rural Broadband, Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges, WC Docket No. 20-71 (filed July 6, 2020) (“WTA Comments”), at 14.

²⁸ INCOMPAS Comments, at 13-16.

²⁹ NPSC Comments, at iii.

³⁰ WTA Comments, at 16.

³¹ NTCA Comments, at 2.

proposal will likely do the opposite.³² Moreover, many comments in this proceeding show the lack of any consumer complaints, confusion, or dissatisfaction regarding TACs:

- According to WTA, its members are not aware of any customer dissatisfaction or complaints regarding the SLC, ARC, and/or SLC/ARC line items on their monthly bills during the last five or more years.³³
- The Concerned RLECs stated that RoR ILECs have not experienced material customer confusion related to the TACs, and that “eliminating these charges and replacing them with a significant increase in the local telephone rate is likely to cause more customer confusion and complaints than retaining them.”³⁴
- The Multi-State RLEC Group explained that the major RLEC end user access charges at issue are “not the subject of consumer confusion,” and suggested that “other actions can be implemented to ameliorate any FCC concerns[.]”³⁵
- Similarly, NTCA warned that “[m]andatory detariffing will only produce substantial customer confusion[.]”³⁶
- While USTelecom also supports the Commission’s goals of minimizing consumer confusion, it is concerned that “prohibiting carriers from separately listing interstate line items will *introduce* confusion and abrupt change into the current system.”³⁷
- The PA PUC cautioned the Commission that its proposal “does not increase transparency,” but rather “the opposite is true.”³⁸
- Similarly, CPUC explained that the original intent to mandate separate access charges on bills was a “vehicle to *promote* transparency,” and warned that removing TACs

³² *INCOMPAS Comments*, at 17-18.

³³ *WTA Comments*, at 14.

³⁴ *Concerned RLECs Comments*, at 9.

³⁵ *The Multi-State RLEC Group Comments*, at 7.

³⁶ *NTCA Comments*, at i.

³⁷ *USTelecom Comments*, at 17.

³⁸ *PA PUC Comments*, at 17.

from customer billing “decreases transparency by hiding charges within local rates[.]”³⁹

(e) The Record Shows That The Commission’s Proposal May Have A Negative Impact On Federal And State Universal Service Fund Programs.

INCOMPAS’ concern that the Commission’s proposal may negatively impact USF contributions was also echoed in the record.⁴⁰ Various comments expressed unease with the uncertainty of a continued, stabilized USF program if the FCC moves forward with its proposal:

- USTelecom warned that the FCC “should avoid making regulatory changes that would deregulate the [TACs] in a manner that could further destabilize [USF].”⁴¹
- As WTA explained, mandatory detariffing of TACs may lead to “disruptions to USF contributions and distributions,” and expressed its concerns if the Commission adopts its contemplated 25% safe harbor.⁴²
- The Concerned RLECs stated that the NPRM’s proposed solutions to address USF and other federal programs “could produce unintended consequences,” especially if it adopts a safe harbor.⁴³
- JSI explained its concern that one consequence of the FCC’s proposal would be “the accelerated erosion of interstate and international revenues used as the base for federal universal service contributions” and how “[e]liminating the base destabilizes well established federal universal service policies.”⁴⁴
- The PA PUC highlighted various legal concerns with the Commission’s proposal, claiming that it unlawfully implicates intrastate revenues for USF contribution assessment purposes and will harm the state USF mechanism.⁴⁵

³⁹ *CPUC Comments*, at 3.

⁴⁰ *INCOMPAS Comments*, at 18-19.

⁴¹ *USTelecom Comments*, at 14.

⁴² *WTA Comments*, at 11-14.

⁴³ *Concerned RLECs Comments*, at 10-14.

⁴⁴ *JSI Comments*, at 7.

⁴⁵ *PA PUC Comments*, at 14-17.

- Others in their comments suggested that the Commission should instead focus its attention on broader, comprehensive USF reform.⁴⁶

III. BEFORE THE COMMISSION MOVES FORWARD WITH ITS PROPOSAL, IT MUST BE AWARE OF ADDITIONAL HARMS IF IT DECIDES TO MANDATE DETARIFFING IN ONLY SOME AREAS.

Given the record in this proceeding and the overwhelming concerns with the Commission's proposal, INCOMPAS' members are concerned that the Commission may decide to mandate detariffing of TACs only in a subset of geographic areas and/or for a particular class of customers. INCOMPAS urges the FCC not to take this path forward.

(a) The FCC should not eliminate interstate TACs for customers in a subset of geographic areas.

As the record shows, the various forms of rate regulation that continue to apply in many states would make it even more costly and impractical for ILECs and CLECs that operate across multiple states to eliminate interstate TACs in some, but not all, areas.⁴⁷ However, the FCC should not view this regulatory barrier as a green light to mandate detariffing of TACs only in areas that do not regulate local rates as many issues would still arise.

As mentioned above, the costs associated with changing billing systems to accommodate the elimination of interstate TACs would be substantial. In addition, most of those costs are fixed, and if the FCC were to eliminate TACs in a subset of ILEC territories, it would increase the per customer cost of adjusting billing systems to implement the new rule. Moreover, mandating the elimination of interstate TACs in a subset of ILEC territories would impose special costs on the

⁴⁶ See *Zingaretti Enterprise Comments*, at 4; see also *Multi-State RLEC Group Comments*, at 15-16; see also *Comments of Ad Hoc Telecom Users Committee, Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020), at 13-17.

⁴⁷ See *supra* section II.a.

large number of multi-location business customers that purchase basic telephone service from many different ILECs. These multi-location businesses with locations in ILEC territories where TACs are eliminated and locations in ILEC territories where TACs are not eliminated would need to incur the costs associated with adjusting to the new rules in only a subset of their locations, thus adding complexity to their purchasing decisions and billing payments. To the extent that multi-location businesses purchase basic local telephone services from CLECs that offer a one-stop shopping option across multiple ILEC territories—as is the case with a number of INCOMPAS members—it would be the CLECs that incur the costs associated with managing new billing rules in a subset of ILEC territories. The time and money needed to address this problem would divert resources away from efforts to improve customer service and construct new facilities.

(b) The FCC should not mandate elimination of interstate TACs only for a particular class of customers.

It would also not make sense for the FCC to mandate elimination of interstate TACs only for a particular class of customers, specifically business and/or government customers. In fact, INCOMPAS argued the exact opposite—that if FCC moves forward with its proposal, it should *exempt* these customers.⁴⁸ Just as eliminating interstate TACs only in areas not subject to state rate regulation would result in higher billing costs per customer in those areas, eliminating interstate TACs for a class of customers would result in higher billing costs per customer for such customers.

The case against prohibiting interstate TACs specifically for business and/or government customers alone is particularly strong. First, as INCOMPAS' comments explained, business and

⁴⁸ *INCOMPAS Comments*, at 20-21.

government customers are sophisticated.⁴⁹ They fully understand the charges on their bills and would not benefit from an unneeded change in those bills. Thus, since a main reason for the FCC’s proposal is to help consumers better understand their bills,⁵⁰ the Commission’s proposal should instead target residential customers. Second, as the record shows, eliminating interstate TACs for business and/or government customers would disrupt settled multi-year service contracts that expressly provide for the recovery of interstate TACs.⁵¹ These contracts are the result of arms-length and frequently lengthy negotiations in a competitive market, and there is no sound basis for the FCC to change the mutually-acceptable commercial terms set forth in those contracts. In fact, doing so would arbitrarily punish service providers. Even where contracts can be modified to account for a new rule, doing so would be needlessly costly and time-consuming for all parties involved. The distinct features of the business and government markets that INCOMPAS explained in its comments demonstrate that the Commission should under no circumstances include either of these types of customers in this proceeding.⁵²

⁴⁹ See *INCOMPAS Comments*, at 20-21.

⁵⁰ See, e.g., *NPRM* at ¶ 37 (“Consistent with the goal of simplifying carriers’ advertised rates and customers’ bills, we also propose to prohibit carriers from billing customers for Telephone Access Charges through separate line items on their bills.”).

⁵¹ See *INCOMPAS Comments*, at 20-21; see also *USTelecom Comments*, at 9-10; see also Comments of Windstream Services, LLC, *Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71 (filed July 6, 2020), at 5.

⁵² See *INCOMPAS Comments*, at 20-21.

IV. CONCLUSION

The record clearly demonstrates that the overwhelming majority of commenters, including INCOMPAS, urges the Commission to reconsider moving forward with its proposal in the Telephone Access Charges NPRM. The record amplifies the various arguments INCOMPAS and its members made in its comments, and we encourage the Commission to heed all the concerns and issues expressed in the various comments filed in this proceeding. Competitive providers have always been innovators and making billing easier and more transparent has always been a customer friendly way to differentiate our service offerings.

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