

## EXCERPTS: Some Impacts if the FCC's Accounting Freeze Is Ended and/or the States are Freed to do as They Like

[IRREGULATOR REPLY BRIEF](#), 10/10/19

- 1) The FCC maintains that the FCC accounting rules, (which are still in use by Verizon NY), have been 'forborne', meaning that they are on the books but no longer apply. If this is truth then the States could fix the cross-subsidies that are in place today and the FCC would no longer have control over the manipulated accounting rules. (Part 36 rules are used to divide up the expenses by a percentage that has been set to reflect the year 2000, literally.)

"An unequivocal holding that forbearance released the states from Part 36 outcomes would free the states..." Page 19

- 2) States would have the independence to stop the cross-subsidies of the construction budgets. Today, 75% of the expenses are put into Local Service, based on the FCC rules and previous formulas still in use. Fixing these rules would lower rates immediately.

"States could independently determine price-cap carriers' intrastate costs adopt an intrastate Category 3 loop factor that is lower than the 75% required by 47 C.F.R. 36.154(c)." Page 19

- 3) Each State could adopt rules that remove the exorbitant Corporate Operations Expenses, lowering basic rates immediately.

"Each state could adopt different intrastate factors and category relationships like for ... Corporate Operations Expense. Then each state could require price-cap and rate-of-return carriers to reduce local rates since—as explained below—separations changes are "exogenous" under all state and federal price-cap regimes." Page 19

- 4) Billions of dollars per state in overcharging would end if the FCC just let the rules and the FCC's 'freeze' expire. As shown by the Verizon NY annual reports, the overcharging was \$2.4-\$3.7 billion annually in 2017 alone, equating to \$14-\$53 billion nationwide, depending on which factors are examined.

"Further, Petitioners did "explain how ending the freeze would alleviate alleged misallocations" and "alleviate their purported injuries." C.f. FCC Br. 33, 36. For example, Petitioners' August 27, 2018 Comments 13, listed the harms inflicted by the freeze and contended that extending the freeze would maintain "massive financial cross-subsidies, rate increases, massive financial losses that save billions in taxes." Allowing the freeze to

# IRREGULATORS vs. FCC

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expire, on the other hand, would end between \$2.4 and \$3.7 billion in Verizon NY annual overcharges. On a nationwide basis expiration would save consumers somewhere between \$14 and \$53 billion. Irregulators September 4, 2018 comments at 5, 9-11, 28, 30”. Page 28

- 5) Prices would immediately be lowered because the cross-subsidies would be removed.

“Expiration would lead to lower intrastate cost burdens and rates for rate-of-return carriers. It would also reduce interstate switched access rates. Pet. Br. 21, 33, 52, 73. Small rate-of-return LECs would incur some compliance costs to calculate the new factors, but as the Petitioners noted below the FCC could reduce the burden in several ways pending full and complete reform. Irregulators Aug. 27, 2019.” Page 28

- 6) The FCC Subscriber Line Charge would go down immediately.

This fee is currently around \$6.50 a month, not counting the taxes, fees and surcharges applied to it, and it is still on all wired phone services. The FCC estimated there were over 55 million lines of basic phone service in use in 2018. There would also be a reduction in another fee, known as the “Access Recovery Charge”, which is \$1.00-.\$2.50.

“Rate-of-return carriers’ allocation to interstate End User Common Line (paid by consumers) and interstate carrier common line switched access (paid by the consumer’s toll provider) would go down. On the other hand, allocations to special adjust those rates accordingly.” Page 29

- 7) The removal of the Freeze would also remove the ability of the companies to cross-subsidize the wireless networks and 5G.

“Going forward, no LEC could use the current jurisdictional cost misalignment to engage in anti-competitive affiliate transactions or subsidize wireless service build-out, including 5G. Consumers would benefit, competition would benefit and pricing would become more rational. That would “help.” Page 29

- 8) The FCC claims that the FCC accounting rules (including Part 36) are no longer in use. As we presented multiple times, multiple rate increases were granted by the NY Public Service Commission (NYPSC) based on losses created by the FCC rules in 2006, 2008 and 2009.

“NYPSC started its analysis of Verizon’s situation by noting significant “access line” and “revenue” “losses” “result[ing] in the companies’ reported rates of return declining and being much lower than what those companies would be allowed in a traditional rate case.” In 2006, NYPSC found that basic local rates NYPSC found that basic local rates were “well

# IRREGULATORS vs. FCC

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below cost” and “should be raised.” These findings were based on carrier-supplied annual reports that rely on the intrastate results flowing from Part 36. April 27, 2018 Hartman Memorandum (analyzing Verizon financial documents calculating amounts “subject to separations.”) Page 22-23

- 9) The FCC presented no evidence to refute our basic claims. And the FCC failed to examine our comments and reports about the cross-subsidies of ‘unregulated’ and competitive services, like wireless and 5G, which we presented in multiple reports in 2017 and 2018.

“The evidence below was uncontested and not even controversial: the LECs and FCC admit current separations outcomes significantly over allocate costs to intrastate and local, and under allocate to interstate. Pet Br. 33-34. Irregulators’ unrebutted comments showed that the rules enable cross-subsidization of unregulated and competitive activities like wireless (including 5G) and broadband. Irregulators May 24, 2017 “Wireless” report and August 27, 2018 comments 6-8, stressed this point. The Freeze Order refused to consider these points based on its holding that the comments were “out of scope.” Irregulators August 27, 2018 comments 5, 9, 11...” page 18

- 10) We contend that the FCC’s accounting rule freeze harmed consumers and that continuing the rules continues the harms. The FCC’s ignorance of what we filed clearly indicates that the FCC’s decision was ‘arbitrary and capricious’.

“The separations freeze has harmed consumers; continuation perpetuates the harm, especially as LEC expand support of “5G.” Ending the freeze will massively benefit consumers, especially intrastate local service users. Petitioners made a compelling case for both “substantive unreasonableness” and “lack-of-reasoned-explanation.” ...The failure and refusal to consider Irregulators’ submissions on consumer impact “renders its decision arbitrary and capricious in that part and warrants a remand to address the issues raised.” *Mozilla Corp. v. FCC*, 2019 U.S. App. LEXIS 29480 \*100 (D.C. Cir. Oct. 1, 2019) (slip op. 100).” Page 8