

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE INTRASTATE)
SWITCHED ACCESS RATES OF ALL KENTUCKY) ADMINISTRATIVE
INCUMBENT AND COMPETITIVE LOCAL) CASE NO. 2010-00398
EXCHANGE CARRIERS)

O R D E R

On March 17, 2011, tw telecom of Kentucky, llc ("TWTC"), Level 3 Communications, LLC ("Level 3"), US LEC of Tennessee, L.L.C. d/b/a PAETEC Business Services ("PAETEC") filed a joint motion to suspend the procedural schedule set out in Appendix A of the Commission's March 10, 2011 Order. On March 31, 2011, AT&T Communications of the South Central States, TCG of Ohio, BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service, and Bell South Telecommunications, Inc. d/b/a AT&T Kentucky (collectively, "AT&T") filed a response to the joint motion to suspend the procedural schedule.

In support of the motion, TWTC, Level 3, and PAETEC argue that "neither the parties nor the Commission should dissipate limited resources in efforts that will be duplicative of, or undermined by, rulings of the Court of Appeals in Case No. 2009-CA-1973 or of the FCC with regard to pending proposals for intercarrier compensation reform."¹ TWTC, Level 3, and PAETEC are of the opinion that the Commission should suspend the procedural schedule in this case until the FCC issues a decision on the approach of the Notice of Proposed Rulemaking and Further Notice of Proposed

¹ See *Joint Motion of TWTC, Level 3, and PAETEC to Suspend Procedural Schedule* on March 17, 2011, at page 1.

Rulemaking, FCC 11-13 (“NPRM”).² TWTC, Level 3, and PAETEC also are of the opinion that the Commission should not proceed in this case until the Court of Appeals has issued a ruling in 2009-CA-1973.³

AT&T’s position in its response is that the Commission should move forward with the case and not wait on either the FCC ruling or the Court of Appeals. The reasons discussed include the March 16, 2010 National Broadband Plan (“NBP”)⁴ issued by the FCC, the FCC’s 2011 NPRM, and the decisions of the Franklin Circuit Court and the Kentucky Court of Appeals denying motions for injunctive relief filed by Windstream pending the appeal discussed in the joint motion. AT&T states that the FCC’s 2011 NPRM is a call to action and not an excuse for inaction by the Commission.⁵ AT&T states that “just because the FCC has called for comments on its 2011 NPRM, there is no assurance the FCC will do anything about intrastate rates anytime soon, if ever.”⁶ Their position is that the FCC agrees that something needs to be done regarding access charges and that the Commission should not abdicate its authority over intrastate communications and do nothing.

² *In re Connect America Fund: A National Broadband Plan for Our Future*, 2011 WL 466775 (Notice of Proposed Rulemaking, rel. Feb. 9, 2011).

³ *Windstream Kentucky West and Windstream Kentucky East, LLC. v. Kentucky Public Service Commission, et al.*

⁴ *Connecting America: The National Broadband Plan*, 2010 WL 972375 (March 16, 2010).

⁵ See *AT&T’s Response to Joint Motion of TWTC, Level 3, and PAETEC to Suspend Procedural Schedule*, March 31, 2011, at 6.

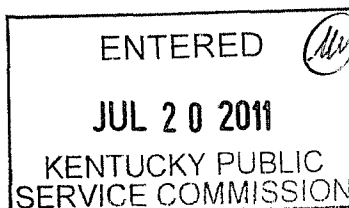
⁶ *Id.* at 7.

The Commission has reviewed the joint motion and the response. The Commission reiterates the reasons stated in its November 5, 2010 Order regarding the Commission's duty to the carriers and telephone end-users in Kentucky to undertake an adequate review of access rate compensation models and methodologies. The Commission delayed the issuance of the procedural schedule in this case until after the issuance of the NPRM so that the Commission could insure that it would not interfere with this case or be unnecessarily duplicative. The Commission is also of the opinion that the case should proceed forward with the existing procedural schedule without waiting on the Kentucky Court of Appeals to issue a decision. The Commission has previously stated that it will not schedule a hearing or render a final decision in this matter until the case before the Court of Appeals is final.⁷


IT IS THEREFORE ORDERED that:

1. The Joint Motion to Suspend the Procedural Schedule is DENIED.
2. The parties shall continue to abide by the procedural schedule attached as Appendix A to the Commission's March 10, 2011 Order.

By the Commission



ATTEST:



Executive Director

⁷ See Commission Order dated March 10, 2011, at 2.

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