REQUEST: Identify those states that have

(a) adopted a plan similar to the plan proposed by AT&T and;

(b) summarize the revenue and cost impact on those states.

RESPONSE: Objection. The information requested by this request is as easily obtainable by the RLECs as by AT&T. Without waiving this objection, see Attachment 1 to SE Acquisitions Item No. 1 for a summary of state access reform requirements.

May 4, 2011

STATES WITH INTRASTATE/INTERSTATE ACCESS PARITY

I. States that Mandate Intrastate/Interstate Parity by Statute for Certain Carriers

Ten states have mandated reduction of intrastate access rates to interstate rate levels by statute, and some have also directed the state utilities commission to ensure compliance through further proceedings and tariff oversight.

Michigan: Largest ILECs - Since 1991, the Michigan Telecommunications Act (MTA), which has been revised on several occasions, has contained a provision that requires mirroring of interstate access rates.[1] In 2000, a provision was added to the MTA that exempted from this requirement carriers serving 250,000 or fewer customers, so only Verizon and AT&T remained subject to this requirement. Both Verizon (now Frontier) and AT&T have been mirroring their interstate access rates since about the mid-1980s, even before the 1991 MTA, as a result of Commission policy.
Smaller ILECs – The MTA was amended in 2009 to require rural LECs to mirror their interstate access rates by the end of September, 2010.[2] The Act also provided for a state Access Restructure Fund for certain eligible small carriers that will end in 10 years. The fund allows small carriers to recover the loss in state access revenue. No retail rate benchmark was set. The fund size will be adjusted at the end of the fourth year and the eighth year to reflect the loss of access lines and the new interstate access rates.
CLECs – The 2009 amendment to the MTA also required CLECs to establish parity in a five year stepped process (20% incremental reductions per year).[3] CLECs may not draw from the Access Restructure Fund.

Maine: Largest ILECs - In Maine, the legislature ordered the commission to ensure intrastate mirroring of interstate switched access rates: "By May 31, 2005, the commission shall insure that intrastate access rates are equal to interstate access established by the Federal Communications Commission as of January 1, 2003."[4] The

[1] Michigan Compiled Laws, chap. 484.2310, sec. 310(2) (1991).

[2] *Id*. as amended Dec. 2009.

[3] *Id*.

[4] Maine Revised Statutes Annotated, Title 35-A, Chapter 71, sec. 7101-B Access Rates (effective May 2, 2003).

Maine Public Utilities Commission implemented the statutory directive by adopting a rule requiring each local exchange carrier to implement access mirroring by June 1, 2003, and to refresh the mirrored rates on June 1 every two years thereafter.[5]
Smaller ILECs – The above requirement applies to all ILECs. Maine has also established a state universal service fund ("USF"), which is available, upon a proper showing, to rural LECs that are qualified as eligible telecommunications carriers ("ETCs").
CLECs – The above requirement applies to all LECs in the state, including CLECs. CLECs operating in rural LEC territories that are also ETCs may participate in the state USF.

Illinois: LECs Electing Market Regulation - In June 2010, the Governor signed SB 107, which provides, in relevant part, that any LEC electing market regulation must reduce its intrastate switched access rates to levels that mirror the rates and rate structure of its interstate switched access rates in four installments by June 30, 2013.[6] The first installment requires reduction of 33% of the difference between intrastate and interstate rates within 30 days of the Electing Provider's complete application for Notice of Election for Market Regulation. The second reduction (equal to 41% of the difference between its then-current rates) must be made within one year of the initial reduction. The third reduction (equal to 50% of the difference in the carrier's then-current rates) must be made within one year of the second reduction, The fourth reduction must be made by June 30, 2013 and must reduce the Electing Carrier's intrastate switched access rates to mirror its rates and rate structure for its then-current interstate switched access rates. Thereafter, Electing Providers must continue to mirror their interstate switched access rates and rate structure.[7]
Smaller ILECs and CLECs - SB 107 Sec 13-900.2 requires (i) ILECs serving more than 35,000 access lines that do not elect Market Regulation and (ii) CLECs that do not elect Market Regulation to reduce their intrastate switched access rates to interstate levels within two years as follows: By January 1, 2011, such carriers must reduce their intrastate switched access rates by 50% of the difference between their then-current intrastate and interstate switched access rates. By January 1, 2012, they must reduce intrastate switched access rates by 50% of the then-current difference between their intrastate and interstate switched access rates. By July 1, 2012, they must reduce their intrastate access rates to mirror their then-current interstate switched access rates and rate

---

[5] Code of Maine Rules, 65-407 Ch. 280, section 8B (current through Aug. 2008).

[6] A LEC that elects market regulation must also offer, for three years, three residential services/service packages at capped rates.

[7] SB 107 Sec. 13-506.2(g).

structure. After July 1, 2012, these carriers must continue to mirror interstate access rates and rate structure.
Smallest ILECs – ILECs serving fewer than 35,000 access lines are not required to reduce intrastate access rates. However, if an ILEC serving fewer than 35,000 access lines elects into market regulation, its switched access rates would be required to be mirrored per the LECs Electing Market Regulation terms outlined above.

Kansas: Largest ILECs - Kansas statutes provide for reduction of switched access rates to interstate levels, with corresponding allowances for increases in retail local exchange rates: "Subject to the Commission's approval, all local exchange carriers shall reduce intrastate access charges to interstate revels as provided herein. Rates for intrastate switched access, and the imputed access portion of toll, shall be reduced over a three-year period with the objective of equalizing interstate and intrastate rates in a revenue neutral, specific and predictable manner. The Commission is authorized to rebalance local residential and business service rates to offset the intrastate access and toll charge reductions."[8] In March 2010, the Kansas Corporation Commission issued an order requiring Embarq (now CenturyLink) to reduce its intrastate access rates to parity with its interstate rates. Because the KCC ruled that Embarq/CenturyLink could recover reduced access revenues from the Kansas Universal Service Fund ("KUSF"), the KCC found that a phased-in reduction of access rates was not necessary. Carriers that contribute to the KUSF (including the AT&T ILEC) are allowed to pass on their USF contributions to their end users.
Smaller ILECs – The above requirements also apply to smaller ILECs, including rural ILECs, subject to a specific requirement that revenue reductions be recovered from the KUSF and that if the reductions exceed a specifically designated amount they may be deferred to odd-numbered years.

Texas: Largest ILECs - The Texas legislature established interstate-intrastate access parity with a directive to incumbent local exchange companies to "reduce both the company's originating and terminating per minute of use switched access rates in each market to parity with the company's respective federal originating and terminating per minute of use switched access rates" on the date the last market of that incumbent carrier is deregulated.[9] The statute also requires a "transitioning ILEC" – an ILEC for which at least one, but not all, of its markets has been deregulated – that has greater than 3 million

---

8 Kansas Code chap. 66. Sec. 66-2005(c)(1996).

9 V.T.C.A., Utilities Code, sec. 65.201(a).

access lines, to reach parity after a phased reduction occurring over 2 years from the date of commencement.[10] The statute further requires incumbent carriers that have established parity to maintain parity on an ongoing basis for all switched access rates.[11]

Smaller ILECs - "Transitioning" ILECs with fewer than 3 million access lines and "newly designated transitioning" ILECs are governed by rate reduction provisions that could lead to parity with interstate rates but do not mandate parity. Transitioning carriers are subject to phased rate reductions, but are not required to reach parity until 75% of their exchanges are deregulated by the Commission.[12] In addition, there are statutory provisions that permit certain ILECs (primarily small and rural companies) to elect incentive regulation under Chapter 59 of the Public Utility Regulation Act. ILECs electing such incentive regulation are not subject to the requirement that intrastate access rates be reduced to parity with interstate rates.[13] Instead, the smaller ILECs are insulated from switched access rate reductions when they opt into Chapter 59 incentive regulation as a *quid pro quo* for committing to meet various infrastructure investment goals prescribed by that chapter.

CLECs - The cited statute requires all telecommunications utilities to charge switched access rates no higher than (a) the prevailing rates charged by the incumbent carrier serving that area; or (b) a statewide average ILEC composite switched access rate as calculated by the state commission.[14]

Georgia: Largest ILEC - By statute enacted in 1995, Georgia required all Tier 1 and Tier 2 local exchange carriers to reduce their switched access rates to interstate levels. The statute mandated for Tier 1 carriers (only) that "The rates for switched access ... shall be no higher than the rates charged for interstate access by the same local exchange company."[15] Based on this requirement, AT&T (the only Tier 1 carrier in Georgia), has been required to maintain parity between its intrastate and interstate switched access charges.

---

[10] V.T.C.A., Utilities Code, sec. 65.202(a). The initial 1/3 reduction occurred on 7/1/2006; the next 1/3 on 7/1/2007; the final 1/3 on 7/1/2008.

[11] *Id*. at sec. 65.201(b) & 65.202(b).

[12] V.T.C.A., Utilities Code, secs. 65.203 & 65.204.

[13] V.T.C.A., Utilities Code, sec. 59.025 (Commission cannot reduce the switched access rates of carriers electing infrastructure commitment under Chapter 59).

[14] *Id*. at sec. 52.155 (and allows for higher rates only upon specific commission approval based upon a cost justification or other rationale for implementation of a higher rate for each rate element).

[15] Ga. Code Ann. sec. 46-5-166(f)(1)(1995).

Tier 2 ILECs - The 1995 statute required Tier 2 carriers to reduce, by July 1, 2000, their intrastate rates to parity with their July 1, 1995 interstate rates.[16] In June 2010, Georgia's governor signed HB 168, which amended the earlier statute and requires Tier 2 ILECs to reduce their intrastate access charges to interstate levels in equal annual increments over five years, beginning January 1, 2011 and ending December 31, 2015. Georgia also implemented an Access Transition Fund, a component of the Universal Access Fund, that is a mechanism to allow the partial recovery of revenues lost by Tier 2 ILECs through intrastate access rate reductions. The fund may operate for a period of no more than 10 years, beginning January 1, 2011.
CLECs - HB 168 requires all certificated carriers other than Tier 2 ILECs to reduce their intrastate switched access rates to interstate levels in equal annual increments over a 10 year period, beginning January 1 2011 and ending December 31, 2020.

Oklahoma: Largest ILECs - Oklahoma by statute requires each local telecommunications service provider serving 15% or more of the access lines in the state to maintain intrastate switched access tariffs "in parity with the *terms and conditions* of the interstate access tariffs of that company," and to ensure on an ongoing basis to "maintain the terms and conditions of the intrastate access tariffs of that company so that they are in parity with the terms and conditions of the interstate tariffs of that company."[17] There is no current parity requirement for Switched Access *rates* for Oklahoma. Oklahoma had previously required mirroring until certain revenue reduction targets had been met.[18] Oklahoma carriers are no longer required to flow through any access reductions, effective July 1, 2009.
Smaller ILECs – The statute does not apply and there are no specific rules applicable to LECs serving fewer than 15% of the state's access lines.
CLECs – There are no specific rules applicable to CLECs. However, the Oklahoma Corporation Commission typically requests CLECs to reduce their switched access rates to the level of the ILECs in whose territory they operate before approving a tariff, unless the CLEC can justify a higher rate by demonstrating higher costs.

[16] *Id.* at (f)(2).

[17] 17 Oklahoma Statutes sec. 17-139.103.D.4 (1997).

[18] *Id.* at 3.

Virginia: Large ILECs - On April 13, 2010, the Governor of Virginia signed a revision to Section 56-235.5:1 of the Virginia Code that requires the State Corporation Commission (SCC) to establish a schedule for ILECs that serve over 15,000 lines in their incumbent territory to eliminate the Carrier Common Line Charge ("CCLC") for intrastate switched access service no later than July 1, 2013. Carriers that received funding prior to April 1, 2010 from the Department of Agriculture's Broadband Initiatives Program are subject to the schedule for small ILECs described below. Carriers that have not been the subject of an SCC proceeding to investigate their CCLC may petition the commission for an extension of time for the elimination of the charge until July 1, 2014. The SCC is required to permit ILECs "to recover a reasonable amount of carrier common line charge revenue lost."[19] The new statutory provision is scheduled to become effective July 1, 2010.
Small ILECs - For small ILECs serving under 15,000 lines and carriers that have received a grant under the Broadband Initiatives Program, the SCC is required to determine no later than July 11, 2011 a schedule for the elimination of the CCLC.
CLECs – CLEC intrastate switched access rates may not exceed the higher of the CLEC's comparable interstate switched access rates or the aggregate intrastate access rate of the ILEC in whose service territory the CLEC is providing service.[20]

Tennessee: All ILECs - On April 11, 2011, the Governor signed into law SB 598/HB 574, which requires all entities that provide switched access service to reduce their intrastate switched exchange access charges to intrastate levels in five equal steps beginning on April 1, 2012.[21] By that date, all ILECs must establish a new intrastate rate structure that matches its interstate rate structure and reduce their intrastate switched access rates by 20% of the difference between their intrastate and intrastate rates. On April 1 of each succeeding year, ILECs' must reduce their intrastate rates by an additional 20% of the difference, so that intrastate and interstate switched access rates will be at full parity by April 1 2016. If intrastate switched access rates or rate structure change, ILECs are required to mirror such changes within 30 days. The law allows ILECs to recover revenue losses through an annual adjustment to their retail rates, which may not be reviewed by the Tennessee Regulatory Authority ("TRA"). The law does not require the TRA to establish a state universal service fund, but it does not alter the TRA's authority to create such a fund upon an appropriate showing of need.

---

[20] 20 VAC 5-417-50E (CLECs may use a blended or composite rate to reflect applicable price ceilings of more than one ILEC or to reflect an alternative rate structure of the ILEC).
[21] The law permits LECs to charge an additur determined by the Tennessee Regulatory Authority ("TRA") as necessary to support to operation Tennessee Relay Service until permanent funding is in place for that program. The additur may not exceed the amount in place as of the effective date.

CLECs – CLECs are bound by the same requirements and may comply by filing a tariff stating that their intrastate switched access charges are the same as those of the ILEC in whose service area the competing telecommunications service provider is offering intrastate switched access service.

Wisconsin: Large ILECs – On May 25, 2011, the Governor signed into law special session bill S.B. 13, which adds Section 77 196.212 and requires ILECs with over 150,000 access lines as of January 1, 2010 to lower their intrastate switched access rates by 25% of the difference between their intrastate and interstate rates after two years. After three years, large ILECs must reduce their intrastate access rates by 33% of the remaining difference; after four years these carriers must reduce intrastate rates by 50% of the remaining difference and at the end of five years intrastate and interstate rates must be equalized. Beginning no later than that date, large ILECs may not charge intrastate switched access rates that are higher than their interstate rates.
Small ILECs – During the four years after the effective date of the new law, the commission is not permitted to investigate, review or set the intrastate switched access rates of small ILECs, i.e., incumbent LECs having fewer than 150,000 access lines as of January 1, 2010.
Large CLECs and New CLECs – Large nonincumbent LECs are defined as LECs with more than 10,000 access lines as of January 1, 2010. Such carriers may not raise their switched access rated above the rates charged on January 1, 2011. No later than 4 years after the effective date of the new law, these carriers must reduce their intrastate switched access rates by 33% of the difference between their then current intrastate and interstate switched access rates. No later than 5 years after the effective date, these carriers must reduce their intrastate switched access rates by 50% of the then current difference between their intrastate and interstate switched access rates. No later than 6 years after the effective date, these carriers' intrastate rates must mirror their interstate rates and may not exceed their interstate rates. New nonincumbent LECs (companies authorized after January 1, 2011) may not charge intrastate switched access rates that are greater than their interstate rates. For three years after the effective date, the commission may not investigate, review or set the intrastate switched access rates of small nonincumbent LECs with under 10,000 lines as of January 1, 2010.

II. States That Mandate Intrastate/Interstate Parity or Substantially Reduced Pricing by Commission Order, Rule or Tariff, Including Where Subsequently Modified

Twelve state commissions have instituted or approved mirroring or near-mirroring of interstate switched access rates for local exchange carriers, although two have subsequently modified this approach. These states generally permit carriers to implement some form of alternative price regulation to ensure revenue neutrality.

Massachusetts: Large ILECs - The Massachusetts Department of Telecommunications and Energy established intrastate mirroring of interstate switched access rates for Verizon in 2002, while also allowing for retail rate rebalancing: "Currently, intrastate switched access charges are higher than interstate switched access charges. This creates a situation where it could cost more for Massachusetts customers to make a call across the state than it does to make a call across the country. The Department concludes that this is inefficient. .. [T]herefore, intrastate switched access charges will be lowered to the more cost-based interstate levels."[22] In noting that the access revenues should be made up by retail rate increases, the Department also stated that "experience has shown that such rate-rebalancing enhances efficiency without negatively impacting universal service."[23]
CLECs - In an order issued June 22, 2009, the Department of Telecommunications and Cable directed that all CLEC intrastate switched access rates be established at or below Verizon's intrastate switched access rates, which, in turn, are required to be set at the levels of Verizon's interstate switched access rates. The Department required that CLEC rates would be capped at Verizon's rate effective one year from the date of its Order.[24]

New Jersey: ILECs – On February 1, 2010, the New Jersey Board of Public Utilities ("Board") issued an order implementing a 4-step, 3-year plan that requires all three of the state's ILECs to reduce their intrastate switched access rates to parity (both as to rates and rate structure) with their interstate access rates.[25] In several prior proceedings, the Board had granted significant (and in many cases complete) retail local pricing flexibility

[22] *Investigation by the Department of Telecommunications and Energy on its Own Motion into the Appropriate Regulatory Plan to Succeed Price Cap Regulation for Verizon New England, Inc. etc.*, 2002 Mass. PUC Lexis 10 (May 8, 2002), at 36.

[23] *Id.*

[24] *Petition of Verizon New England, Inc., et al for Investigation under Chapter 159, Section 14 of the Intrastate Access Rates of Competitive Local Exchange Carriers*, D.T.C. 07-9, Final Order, released June 22, 2009. One rural CLEC was permitted to charge a rate equal to the NECA tariff rate.

[25] *In the Matter of the Board's Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates*, Docket No. TX08090830.

to the two largest ILECs,[26] without addressing access rates. The amount of rate flexibility the Board had previously granted those carriers far exceeded the access revenue reductions required by the Board's Access Order. In addition, consistent with those ILECs' commitment not to seek additional pricing flexibility until after the Board issued an order addressing intrastate access rates, the Board expressed its willingness to consider further retail pricing flexibility for the ILECs in a follow-on proceeding. LECs have appealed the Board's ruling to the state's Appellate Division.
CLECs – In the same order, the Board rejected the proffered CLEC cost studies, found that CLECs had not shown their costs of access exceed their interstate access rates, and required CLECs to mirror the rates of the ILECs in whose territory they operate. This means that when the phase-in plan is complete the CLECs' intrastate access rates will be the same as their interstate rates.

Alabama: Largest ILECs - In 1995, the Alabama Public Service Commission allowed South Central Bell to elect price regulation with various conditions, including requiring South Central Bell to maintain intrastate access charges at a level not to exceed interstate access rates for a period of five years. The decrease to interstate parity was effective immediately. After expiration of the five year period, South Central Bell was required to continue to cap these rates at "the lower of the intrastate rates in effect on July 1, 1999, or the effective interstate prices and structures approved by the FCC."[27] In December 2004, the Commission adopted a Price Flexibility Plan for BellSouth that capped BellSouth's combination of the traffic sensitive per minute charge for originating and terminating switched access service at the then "effective intrastate level (including any non-traffic sensitive rate elements)."[28]
Smaller ILECs - The Price Flexibility Plan for other ILECs is the same as BellSouth's for intrastate switched access rates, although the actual level of the cap is different.

Ohio: Largest ILECs - ILECs in Ohio were initially required by the Public Utilities Commission of Ohio ("PUCO") to mirror their federal access rate structure for intrastate switched access rates in 1987.[29] In 1997, the PUCO ordered numerous companies to maintain their intrastate rates at then-current levels while it deliberated how to address

---

[26] The remaining New Jersey ILEC is a very small carrier that is subject to rate of return regulation.

[27] *In Re Petition of South Central Bell Telephone Company to Restructure its Form of Regulation, etc.*, Docket Nos. 24499, 24472, 24030, 24865, Report and Order, September, Ala. P.S.C. (1995) at par. 9.03.

[28] *In Re Proposed Revisions to the Price Regulation and Local Competition Plan*, Docket No. 28590, Order Approving Alabama Telecommunications Regulation Plan, December, Ala. P.S.C. (2004) at Appendix A, page 9, section 7.C.

[29] *In Re Modification of Intrastate Access Charges*, Case No. 00-127-TP-COI, Opinion and Order, (2001 WL 283031) at par. 2, citing *In the Matter of the Commission's Investigation Relative to Establishment of Intrastate Access Charges*, Case No. 83-464-TP-COI, Subfile C (May 21, 1982 and March 12, 1987).

anticipated interstate anticipated changes in interstate access rates. In 2001, the four largest ILECs (Ameritech, Cincinnati Bell, Sprint and Verizon) were ordered to cap their intrastate rates at the interstate level. In 2007, the Commission reiterated its support for earlier orders requiring the four largest incumbent local exchange carriers to mirror their interstate switched access rates for intrastate access services.[30] However, the Commission has made an exception to the mirroring requirement with respect to the intrastate Carrier Common Line Charge ("CCLC"), which was capped at 1987 levels. Nonetheless, Ameritech, CBT and Verizon have taken steps to reduce or eliminate the intrastate CCLC due to merger conditions and alternative regulation plans.
Smaller ILECs – All ILECs other than the four largest incumbents were required to mirror interstate rates that were in effect a decade ago.
CLECs – The PUCO's 2007 order also required competitive local exchange carriers to cap their intrastate rates at the level of the ILECs in whose territory they operate.[31]

Indiana: Largest ILECs – The Indiana Utility Regulatory Commission ("IURC") has embraced the concept of parity for over twenty years. In a series of dockets, the IURC adopted the principle of general structural and rate parity, and established that intrastate access charges that mirror interstate charges are "presumed to be lawful without further evidence." [32] When faced with the issue in subsequent cases, the IURC found that mirroring (or parity) should be continued, approved streamlined tariff filing procedures for mirrored access rates, and, in the case of AT&T Indiana (formerly Indiana Bell), allowed for "instant mirroring" of interstate access charges. Although the mirroring requirement is not contained in Indiana statute, the 2006 Indiana Regulatory Reform Legislation (House Enrolled Act 1279) made the presumption of reasonableness for mirrored rates a component of state law. Indiana Code Section 8-1-2.6-1.5(c)(2) states that if a provider's rates/charges for switched or special access service are at issue in a dispute before the state commission, or are included in an interconnection agreement or statement of generally available terms and conditions reviewable by the commission, "the commission shall consider the provider's rates and charges for intrastate access service to be just and reasonable if the intrastate rates and charges mirror the provider's interstate rates and charges."

---

[30] *In the Matter o/the Establishment of Carrier-to-Carrier Rules,* Case No. 06-1344-TP-ORD, Entry on Rehearing, Ohio P.U.C.(October 17, 2007) ("2007 Order") at par. 29, p. 18.

[31] *Id.*

[32] *See Re Intrastate Carrier Access Charges,* Cause No. 38269, 1989 WL 418618 (April 12, 1989), *ORDER adopting the principle of structural and rate parity between intra- and interstate access tariffs, and approving implementation of an intraLATA access based compensation plan*; *see also* Cause Nos. 37200 and 37905.

Smaller ILECs – The IURC has also applied the principles of access rate parity to the smaller ILECs, even during periods of access rate reform at the FCC. As a result of the revenue reductions facing rural carriers resulting from the federal MAG plan, the IURC approved a settlement agreement creating a state universal service fund (the Indiana Universal Service Fund or IUSF) in 2004 from which eligible telecommunications carriers may draw. The IURC order set benchmark residential and business rates that essentially required rural companies to recover part of the revenue losses resulting from the MAG plan through rate rebalancing.[33] The statutory provision creating a presumption of reasonableness for mirrored rates applies to small ILECS as well as large ILECs and CLECs.
CLECs – Although the above statutory provision does not literally require rate parity, its "just and reasonable" standard also applies to CLECs.

New Mexico: All LECs - New Mexico administrative rules provide that effective January 1, 2008, "a local exchange carrier's intrastate switched access charges may not exceed the interstate switched access charges approved by the federal telecommunications commission as of January 1, 2006, and its intrastate switched access elements and structure shall conform to the interstate switched access elements and structure approved by [the FCC)]."[34] The rules also provide a mechanism to require carriers to continue to mirror updated interstate switched access rates.[35] New Mexico has also created a state universal service fund ("USF") that is available to LECs (including CLECs) that have qualified as eligible telecommunications carriers.

West Virginia: Largest ILECs - By order of the state commission in March of 2007 approving Verizon's Market Transition Plan ("MTP"), Verizon is eliminating the carrier common line charge from its intrastate switched access rates and mirroring its interstate traffic-sensitive switched access rates over a phase-in period through year-end 2010. Verizon is being granted pricing flexibility for basic local exchange services commensurate with the revenue reductions attributable to switched access decreases. At the conclusion of the phase-in period, all Verizon intrastate switched access rates are expected to mirror interstate rates.[36]

---

[33] *Re: Universal Service Reform*. Cause No. 42144, 2004 W.L. 1170315 at par.38. Due to appeals by certain parties, the IUSF order was not implemented until 2007, after the order was affirmed by the Indiana Court of Appeals.

[34] N.M. Admin. Code 17. 11.1 0.8(C) (2005). *See also* N.M.S.A. 63-9H-6I (requiring state commission to ensure intrastate access charges are equal to interstate access charges by May 1, 2008).

[35] *Id.* at 17. 11. 10.8(I).

[36] *Petition for Approval of Joint Stipulation and Agreement for Settlement and Joint Petition for Expedited Approval of a Joint Stipulation for a Market Transition Plan for Verizon West Virginia Inc.,* Case No. 06-1935- T-PC., W.V.P.S.C. (2007).

<u>CLECs</u> - By Commission Order dated November 23, 2009, CLECs are required to mirror Verizon's intrastate rate (which will soon mirror its interstate rate) over a phase-in period ending thirty months from the date of the Order.[37]

Virginia: <u>Large ILECs</u> – In May, 2009, the Virginia State Corporation Commission ("SCC") issued an order requiring the CenturyLink companies (i) to restructure their carrier common line charges ("CCLCs") to a per minute rate by January 1, 2010; (ii) to reduce their CCLCs by 25% on or before July 1, 2010 and (iii) to reduce their CCLCs by 25% of their January 1, 2010 per minute rates no later than July 1, 2011.[38] In addition, the parties to the CenturyLink proceeding have sought SCC approval of a settlement that requires CenturyLink companies to reduce their CCLCs by 25% of their January 1, 2010 rates no later than July 1, 2012 and to eliminate their CCLCs entirely no later than July 1, 2013.
<u>Small ILECs</u> – On April 21, 2011, the SCC issued an order[39] requiring all small ILECs (with fewer than 15,000 lines) to implement a schedule by July 1, 2011 to eliminate the Carrier Common Line Charge ("CCLC") element of intrastate switched access charges. Carriers are given two schedule options from which to choose. Under Option 1, the CCLC is to be reduced in annual decrements to zero by January 1, 2015. Under Option 2, CCLC will be reduced annually by an amount equal to $1.00 per residential line and $2.00 per business line (times 12 months). The decreases are first applied to the terminating CCLC until it is equalized with the originating CCLC. Thereafter, the decreases are to be applied equally to the originating and terminating CCLC. The CCLC to must be reduced to zero by January 1, 2017 if the above decreases have not already achieved that result.

Iowa: <u>Rural ILECs</u> **–** In January of 2009 the Iowa Utilities Board (IUB) issued its final order instructing Iowa Telecom Association (ITA) to lower its intrastate switched access rates to mirror interstate NECA rates with the exception of the carrier common line charge.[40] ITA is an association made up of rural telecommunications providers and the majority of its membership concurs in the ITA intrastate switched access tariff. The IUB determined that it would examine in a separate docket the necessity of the carrier common line charge to rural carriers in Iowa.

---

[37] *Petition of Verizon West Virginia Inc. et al.*, Commission Order, Case No. 08-0656-T-GI (November 23, 2009).

[38] *Petition of Sprint Nextel for Reductions in the Intrastate Carrier Access Rates of Central Telephone Company of Virginia and United Telephone-Southeast, Inc.*, Case No. PUC-2007-00108.

[39] *In the Matter of Implementing Virginia Code § 56-235.5:1.B1(ii), to determine a schedule for the elimination of the carrier common line charge*, Order Adopting Schedule, Case No. PUC-2011-00002.

[40] *In re Iowa Telecommunications Association*, Docket Nos. TF-07-125 & TF-07-139 2009 WL 2141213 (Ia.U.B. 2009).

Alaska: ILECs – On August 18, 2010, the Regulatory Commission of Alaska ("RCA") issued an Order adopting new access regulations that will become effective 60 days after filing by the Lieutenant Governor.[41] The new regulations provide for elimination of the Carrier Common Line ("CCL") access charge rate element. The CCL will be replaced by (i) a new Alaska Universal Service Fund ("AUSF") surcharge and (ii) a gradual increase to the Alaska Network Access Fee ("NAF"), which is a flat fee paid by residential and business customers. The total NAF increase will vary by LEC, depending upon its costs of service. IXCs will lower their intrastate long distance rates, with the goal of reaching parity with interstate long distance rates.[42] The Order also defines the obligations of a Carrier of Last Resort ("COLR"), establishes a process for selecting a COLR in various areas from among competing providers, and creates a new COLR Support program paid through the AUSF.[43] The new regulations also require ILECs in competitive markets to leave the state access charge pool and begin pricing access services on a company-specific basis.
CLECs - CLEC access rates are capped at the underlying ILEC's access rate.[44]

Kentucky: ILECs - In 1995, the Kentucky Commission approved a price regulation plan for BellSouth that required BellSouth to implement switched access rates that mirrored analogous interstate access rate elements.[45] The Commission later stated that its earlier Order "clearly and unequivocally required mirroring of interstate access rates as the FCC changed access rates," and required mirroring rates to be effective no later than 30 days after the FCC changed interstate rates.[46] The Commission subsequently

---

[41] *I/M/O Consideration of Modifying Alaska Access Charge Policies and the Use of the Alaska Universal Service Fund to Promote Universal Service in Alaska; I/M/O Petition of Alaska Exchange Carriers Association, Inc. for Amendments to the Alaska Intrastate Interexchange Access Charge Manual and Application for Temporary Waiver of Manual Provisions Pending Conclusion of Proceeding,* R-08-3, Order No. 8, R-09-3, Order No. 4 (August 18, 2010).

[42] AT&T Alaska and GCI, the two largest IXCs in Alaska, committed to lower their intrastate long distance rates after their CCL access payment obligations were eliminated.

[43] A COLR will be required in all Alaska study areas except for Anchorage, where there is significant competition.

[44] Regulatory Commission of Alaska, Alaska Intrastate Interexchange Access Charge Manual, sec. 102.

[45] *Application of BellSouth Telecommunication, Inc., d/b/a South Central Bell Telephone Company to Modify Its Method of Regulation,* Case No. 94-121 (1995), Order; 1995 WL 135116 Ky. 1628 (1999), 1999 WL 135116 (Neb. P .S.C.), at 7. The Commission initially exempted the PICC and TIC for originating access and capped terminating rates at the levels of originating rates. The Commission also gave guidelines for residential and business rate rebalancing initiatives. *Id.* at 5.

[46] *Telecomm, Inc.'s Application to Restructure Rates,* Case No. 97-074, Neb. P.S.C. (1997). *See also,* Tariff Filing of BellSouth Telecommunications, Inc. to Mirror Interstate Rates, Case No. 98-065 (1999).

approved further access reductions for BellSouth and Cincinnati Bell, citing public interest benefits associated with removing economically inefficient subsidies.[47] In July 2006, statutory revisions effectively changed this regulatory scheme. Current statutory provisions permit telephone utilities the option to elect a price regulation plan as described within the statute.[48] Under price regulation, an electing utility's rates for intrastate switched-access service "shall not exceed its rates for this service that were in effect on the day prior to the date the utility filed its notice of election."[49] Accordingly, Kentucky's switched access rates are capped and no longer need to mirror interstate rates. AT&T-KY filed notice of its price regulation plan election on July 12, 2006.

Oregon: Largest ILECs - In 2001, the Commission approved a Qwest rate rebalancing plan that provided substantial access reform. The Commission required Qwest to reduce switched access rates by decreasing the local switching rate and eliminating the carrier common line charge, a move calculated to "bring Qwest's intrastate switched access rates closer to its currently lower interstate switched access rates ... an equitable development with respect to consumers . . ."[50]

III. States That by Tariff Establish Intrastate Access Rates Near Parity with Interstate Rates

LECs in two states have established by tariff intrastate switched access rates that are virtually at parity with corresponding interstate rates.

Mississippi: BellSouth's terminating intrastate access charges "are currently at parity with the FCC interstate rates and will be adjusted annually subject to a cap at parity."[51] The intrastate rates in total for a two-ended call are marginally higher than interstate rates ($0.0095 intrastate vs. $0.0088 interstate).

---

[47] *See, e. g., Review of BellSouth Telecomm, Inc.'s Price Regulation Plan,* Case No. 99-434 Ky. P.S.C. (2000), at 5.

[48] Ky. Rev. Stat. 278.543.

[49] *Id.* at 278.543(4).

[50] *Re: Qwest Corporation, UT 125/Phase II,* Order No. 01-810, 213 P.U.R. 4th 78 (2001).

[51] BellSouth Telecommunications, Inc. Mississippi, Access Services Tariff, effective January 1, 2008.

North Carolina: In 1996 as part of a retail rate plan filing, BellSouth began a 3 year phase-down of intrastate access toward interstate rates, which was completed in 1999. By order dated July 21, 2009, the Commission froze switched access rates at current levels for all LECs that have elected retail rate deregulation, pending the Commission addressing access charges in a generic proceeding.[52] The current BellSouth per-minute, two-ended intrastate access rate is almost identical to interstate rates at $0.0092, compared with an interstate rate of $0.0088.[53]

IV. Other State Actions

Nevada: Large ILECs - The rates, terms and conditions for switched access services are currently regulated in Nevada and must be consistent with federal law.[54] Carriers may reduce switched access charges to parity with the associated interstate switched access rates without a rate proceeding.
CLECs - The Public Utilities Commission of Nevada may deregulate switched access services provided by a CLEC upon its own motion or acting upon a carrier petition.[55]

Missouri: ILECs - Missouri enacted House Bill No. 1750, which adds Sec. 392.605 to the state's Revised Statutes. That section requires incumbent LECs that serve over 25,000 access lines to reduce their intrastate access rates by eighteen percent of the difference between their intrastate and interstate access rates in three equal installments. The first six percent reduction is to occur by March 1, 2011. The second and third reductions must occur by March 1 of the succeeding two years.
CLECs – As a condition of competitive classification, a CLEC is required to cap switched access rates at the level of the ILEC in whose territory it operates.[56]

---

[52] NCUC Order, Docket No. P100, sub. 165 (July 21, 2009).

[53] *See generally*, BellSouth Access Services Tariff, sec. E.6, for Mississippi, North Carolina, Alabama, South Carolina and Florida.

[54] Nevada Revised Statutes 704.68873.

[55] Nevada Revised Statutes 704.68879.

[56] Missouri Statutes sec. 392.370.

Addendum

Additional States that Place Limits on CLEC Intrastate Switched Access Rates

The following states place limits upon CLEC switched access rates that are in most cases tied to the intrastate rates of incumbent LECs against which they compete.

California: Effective January 1, 2009, CLEC access rates are capped at the higher of AT&T's or Verizon's intrastate access charges plus 10%. In addition, each intrastate rate charge element is capped at the level of AT&T or Verizon for the same element, plus 10%.[57]

Colorado: CLEC intrastate switched access rates must be cost based as determined by the Commission, and may not exceed the average price by rate element in effect on July 1, 1987.[58]

Connecticut: CLEC intrastate access rates are capped at $0.015 per minute, an amount equal to the principal ILEC's (AT&T's) access rate, which the Department of Public Utility Control ("DPUC") had reduced to cost based levels. Carriers seeking to charge a higher rate must provide a cost of service study to demonstrate a need for higher rates.[59]

Delaware: A CLEC which elects to be regulated under Subchapter VII-A of the Title 26 of the Delaware Code may not charge switched access rates under tariff that are higher than the tariffed switched access rates of the service provider serving the largest number of local exchange access lines in the state.[60] However, a CLEC which is regulated under Subchapter III of Title 26, the traditional regulatory scheme, is not subject to a cap. It may increase its access rate under traditional ratemaking rules. Legislation to provide for an access rate cap for such CLECs currently is pending in the Delaware legislature.

Louisiana: CLECs may not charge switched access rates that exceed the rates of the competing ILEC in each of the CLEC's certificated territories.[61]

---

[57] *In re Review Policies Concerning Intrastate Carrier Access Charges*, 2007 W.L. 5086757 (Ca PUC 2007).

[58] *I/M/O Emergency Rules Relating to Default Regulation of Competitive local Exchange Carriers*, 2006 WL 2135500 (Colo. P.U.C.) 2006 WL 2135500, Rule 2203 (a)(II).

[59] *Re Intrastate Carrier Access Charges – Court Ruling*, Docket No. 02-05-17, 2005 WL 1566747 (June 15, 2005).

[60] Del. Code sec. 707(e).

[61] Louisiana Public Service Commission Regulations for Competition in the Local Telecommunications Market, sec. 301-K-4.

Maryland: CLEC switched access rates are capped at the level of the principal ILEC (Verizon). Proposed access rates at or below the level of Verizon are deemed just and reasonable. Rates exceeding Verizon's rates must be supported with adequate cost data.[62]

New Hampshire: CLECs may not charge access rates greater than those charged by the ILEC.[63]

New York: CLEC switched access rates may not exceed those of the largest carrier in the LATA without a showing that higher rates are cost-based and in the public interest.[64]

South Dakota: CLECs (as all other LECs) must either file a cost study justifying its access rates or file a waiver to charge the average rate of all South Dakota carriers.[65]

Washington: CLEC intrastate rates for terminating switched access must not exceed the rates charged by the ILEC for terminating access service in the comparable geographic area, including any applicable universal service rate.[66]

Wyoming: CLEC rates for switched access service are capped at $0.03/minute for originating and terminating access as of January 1, 2010.[67]

---

[62] *Re Intelenet of Maryland, Inc., Re Policies Regarding Competitive Local Exchange Telephone Service*, Case 8584 Phase II, Order No. 72348 (December 28, 1995), 1995 WL 848272 (Md. P.S.C.).

[63] N. H. Public Utility Commission Rule 431.07.

[64] *Proceeding on Motion of Commission to Examine Issues relating to Continuing Provision of Universal Service*, N.Y.P.S.C. Case No. 94-C-0095, 28425, 1998 WL 518159 (June 02, 1998).

[65] S.D. PUC Rules, Chapter 20:10:27-29.

[66] Washington Administrative Code 480-120-540(2).

[67] Wyoming Statutes sec. 37-15-203(j).

REQUEST: Explain how the adoption of plans similar to the proposed plan by AT&T affected the structure and level of consumer costs in those states.

RESPONSE: Intrastate switched access charges are a principal component of the wholesale costs that wireline long distance carriers incur when they provide retail long-distance service. In fact, today in certain instances AT&T must pay per-minute intrastate access charges that are *higher* than its per-minute retail prices for long-distance service. Obviously, high wholesale costs drive up retail prices; conversely, it is just as obvious that decreases in the wholesale costs of providing a service lead to decreases in retail prices for that service. The FCC has reduced switched access rates for interstate calls, and over 20 states have tracked the FCC's reforms on the intrastate side.

Attachment 1 to SE Acquisitions First Data Requests Item No. 2 depicts 19 state charts showing that AT&T long distance prices declined faster than access rate reductions over time in various states.

The information requested is proprietary and confidential pursuant to KRS 61.878 and AT&T will provide it upon the execution by SouthEast Telephone of an appropriate non-disclosure agreement. Concurrent with its response to this Data Request, AT&T Kentucky is filing a Petition for Confidentiality with the Kentucky Public Service Commission.

There have been several studies over the years that have reached the same conclusion as depicted in these charts, *i.e.*, decreases in the wholesale costs of providing a service lead to decreases in retail prices for that service. *See e.g.* "Regulatory Policy and the Reverse Cellophane Fallacy," Debra J. Aron and David E. Burnstein, *Journal of Competition Law and Economics* (2010) 6(4): 973-994. *See also*, "INTERCARRIER COMPENSATION: A White Paper To The State Members Of The Federal-State Joint Board On Universal Service" by Dr. Robert Loube and Labros E. Pilalis, February 7, 2011, page 11, that can be found at the following link:
http://www.naruc.org/special/Intercarrier%20Compensation%20White%20Paper%202011%2002%2007.pdf

The entire Attachment is proprietary. There is no edited version.

REQUEST: Indicate if any rate increases or new charges were introduced in those states as a result of implementing reform.

RESPONSE: Objection. The request is overly broad and unduly vague. Without waiving its objections, *see* AT&T's Response to SE Acquisitions First Data Requests Item No. 1 for a summary as to how reforms were implemented in the states described therein.

REQUEST: Provide total number of AT&T access lines currently in service in Kentucky in:
(a) Metropolitan Areas
(b) Rural Areas

RESPONSE: Objection. The information requested is irrelevant to the issues in this case and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, the total number of AT&T Kentucky retail switched access lines currently in service in Kentucky as of December 31, 2010, are:

(a) Urban/Suburban Areas – [redacted]
(b) Outstate/Rural Areas – [redacted]

The information requested is proprietary and confidential pursuant to KRS 61.878 and AT&T will provide it upon the execution by SouthEast Telephone of an appropriate non-disclosure agreement. Concurrent with its response to this Data Request, AT&T Kentucky is filing a Petition for Confidentiality with the Kentucky Public Service Commission.

EDITED

REQUEST: Does AT&T agree that further reduction of switched access rates will require a shift of costs to end users? Why or why not?

RESPONSE: End users pay for all telecommunications costs, whether paid directly, through implicit subsidies in switched access rates or explicit subsidies in universal service funds. The real question before the Commission is whether other carriers' end users should be saddled with costs the CLECs and ILECs (who are the focus of this investigation) should recover directly from their end users. AT&T's plan includes a provision for revenue neutral rebalancing that will authorize but not mandate carriers to increase retail rates to the extent they do not currently have such authority. Additionally, AT&T's plan will enable ILECs to draw any remaining access shift from a KUSF based upon their imputed retail rates moving to the benchmark level. Because the implicit subsidies contained in ILEC switched access rates were not established for the CLECs, AT&T's plan encourages the CLECs to use their existing unlimited pricing flexibility to recover their costs from their end users for whom the costs were incurred in the first place, rather than overburden other carriers' consumers with any CLEC economic inefficiency.

REQUEST: What indicators are appropriate measures to demonstrate that access rate reductions encourage competition?

RESPONSE: *See* AT&T's Response to SE Acquisition First Data Requests Item No. 2.

REQUEST: Provide what costs AT&T's proposed rate is designed to cover.

RESPONSE: Objection. This request is vague and ambiguous, and it does not appear to address the context of AT&T's plan that only proposes that the ILECs reduce their intrastate rates to interstate levels and that CLECs' rates be constrained at the intrastate level of the ILEC with whom they compete. The Kentucky CLECs have faced similar rate caps at the federal level since 2001, and have not successfully claimed that the rate cap prevented them from covering their interstate costs. Since interstate and intrastate access involves materially the same functions, that interstate rate level should also cover their intrastate access costs. Although AT&T's proposal for the CLECs requires that their intrastate rates are capped at the levels of ILECs in whose territories the CLECs compete, this essentially means that the CLECs will mirror their interstate rates since pursuant to FCC rules their interstate rates have been capped at the competing ILECs' interstate rate levels since 2001.

REQUEST: Are AT&T costs for providing service the same for all zones throughout Kentucky? Why or why not?

RESPONSE: Objection. This request is irrelevant, unclear and overly broad and is not reasonably calculated to lead to the discovery of admissible evidence. AT&T's costs for providing service throughout Kentucky are not relevant to the issues before the Commission in this docket. Without waiving this objection, AT&T states that generally speaking and depending on the service in question, costs may vary for providing a given service in various zones throughout Kentucky.

REQUEST: How often does AT&T evaluate access pricing in Kentucky?

RESPONSE: AT&T Kentucky's intrastate switched access rates have been capped since July 12, 2006, pursuant to KRS 278.543(4) when AT&T Kentucky elected alternative regulation under KRS 278.541 – KRS 278.544.

REQUEST: Does AT&T's pricing differ among states?

RESPONSE: Objection. It is unclear as to what pricing this request is addressing. Without waiving this objection, AT&T states that generally speaking pricing for some services may differ among states.

REQUEST: Explain AT&T's view as to why Kentucky should not recognize a rural CLEC and implement a rural exemption for rural CLECs as the FCC does.

RESPONSE: AT&T's plan does not propose any rural exemption. Although the FCC may have had the intention of creating parity between the rural CLECs competing with NECA carriers and those competing with non-rural ILECs (*See In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers,* CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001) (*CLEC Access Reform Order*, ¶ 66), the rural exemption provision of the FCC's order has caused unintended consequences. Rather than increasing rural competition and leveling the playing field, the order has had the effect of fostering fraud and massive arbitrage in the form of traffic stimulation. The preponderance of CLECs that are engaged in traffic stimulation schemes are rural CLECs that qualify for the FCC's rural CLEC exemption. In other words, CLECs have located themselves in areas where they qualify for the rural exemption solely for the purpose of arbitrage and they are not actually entering the rural market for the benefit of rural consumers. The extremely high access rates provided under the rural exemption has resulted in the forced extraction of many millions of dollars from toll providers and their customers for no public policy benefit.

Moreover, such exemption will be difficult to police and strain the Commission's limited resources. For example, any consideration to adopt the FCC's rural exemption must also consider any change that had occurred, since its adoption, in the way the Census Bureau classifies territories as either urban or rural - specifically the treatment of urbanized areas or urban clusters. This type of discussion will divert attention from the simple access reform proposal in AT&T's plan that can be implemented without much difficulty. AT&T advocates that the rural exemption policy should not be replicated at the state level.

REQUEST: Why does AT&T's proposal exclude CLECs from the KUSF?

RESPONSE: Competitive local exchange carriers (CLECs), as their name suggests, are "competitive" companies that are expected to enter markets without a subsidy mechanism that is supported by other carriers' customers. Accordingly, only ILECs should be eligible for access replacement KUSF revenue and the amount distributed should be determined after considering the amount of revenue that would be available if the ILECs increased their retail rate up to a certain benchmark level over a prescribed transition period. The ILECs' access charges were designed to provide additional revenues that implicitly subsidized prices for basic local service in rural and high-cost areas, during the monopoly era in order to promote the goal of universal service.

By contrast, CLECs stand in a very different position from the ILECs. The implicit subsidy that is the subject of this case was never established for the CLECs, and the CLECs have never been subjected to any legacy system that created implicit subsidies for universal service objectives, *i.e.* CLECs could determine which geographic areas to serve, and they have been given the opportunity to price their services under a more flexible system than existed traditionally for the ILECs, and one they felt allowed them best to be successful in the competitive marketplace.

REQUEST: Does AT&T contend that all carriers have the same costs for providing service?

RESPONSE: Objection. This request is irrelevant, unclear, ambiguous, and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, generally speaking AT&T does not know what is contained in various carriers' cost structure and so cannot answer whether all carriers have the same costs for providing service. Moreover, AT&T's proposal does not require carriers to reduce their rates to cost so any suggestion or implication that the Commission should review carrier specific costs is irrelevant and unnecessary. *See also* AT&T's Response to SE Acquisitions First Data Requests Item No. 14.

REQUEST: Does AT&T agree that access rates should correlate with the carrier's costs?

RESPONSE: AT&T believes the Commission does not need to review any cost studies in this case, and that is even more so for the CLECs. Contrary to the premise of this question, inefficient CLECs that have over-invested vis-a-vis their competitors should not expect to foist their excessive costs onto their captive customers for intrastate switched access service. AT&T posits that inefficient CLECs may allegedly incur higher costs to provide service to an end user location, and does not suggest that such CLECs be denied the opportunity to recover those costs from their end users for whom the costs are incurred. Rather, AT&T maintains that such cost burden and responsibilities not be passed on to the IXCs and their customers by inappropriately including such costs in the development of CLECs' intrastrate switched access charges. And the Commission need not be saddled with the task of reviewing every CLEC's cost study in order to set CLEC specific switched access rates.

AT&T maintains that the "market price" for switched access is the price of the competing ILEC. CLECs' rates should be capped at that level because, as the FCC has found, switched access service has bottleneck characteristics and wholesale customers, *i.e.*, the IXCs, must be protected from being exploited by the CLECs. The CLECs had a choice whether to enter Kentucky and whether to offer local service (and thus offer intrastate access service). Having voluntarily chosen to provide such service, such CLECs should also be subject to the relevant market constraints, including the cap on the intrastate switched access rates they can charge to their captive customers. This is an elementary characteristic of competitive markets: a potential market entrant evaluates the market price and the possibility that the price could vary, and determines if it can efficiently enter the market and provide a product or service at or below the market price in the long run. If a particular competitor is inefficient, the competitive market does not reward that competitor with a subsidy, nor does it encourage such inefficiency by creating a special exemption to allow that competitor to charge above-market rates to captive customers, even if such CLEC claimed it had higher costs than the ILEC. Instead, the competitive market disciplines inefficient competitors and penalizes the inefficiency. It is precisely the incentive of this reward and the corrective nature of this discipline that attracts efficient competitors, creates an efficient market, and ultimately benefits consumers. With this in mind, CLECs' costs are irrelevant in this proceeding and the Commission can easily rely on this market solution to set a rate cap for CLECs in Kentucky.

If the CLECs claim their excess costs are justifiable, there is no need to engage in that debate in this proceeding. Instead, they should present it directly to their end users and see if those consumers will agree to pay the higher price. If their end users do not agree to pay them, then the CLEC would need to pursue other routes, such as improving its efficiency in order to reduce its costs or providing greater value to justify the higher price – the same kind of things that providers in competitive markets must do to remain in business.

REQUEST: Does AT&T contend that CLECs provide the same access service in the same geographic area as AT&T?

RESPONSE: Yes, from the perspective of an IXC that purchases access service from the CLECs. Switched access is a homogeneous commodity and it is generally the same function whether an ILEC provides it, or it is provided by a CLEC.

REQUEST: Page 6 of AT&T's Petition and Complaint states, "In its recent National Broadband Plan, the FCC encouraged states to complete rebalancing of local rates to offset the impact of lost access revenues as doing so would encourage carriers and states to rebalance rates to move away from artificially low $8 to $12 residential rates that represent implicit subsidies to levels that are more consistent with costs." Does AT&T contend that all carriers in Kentucky enjoy this rate?

RESPONSE: No. There are some carriers in Kentucky that have local residential rates lower than, and some that have local rates higher than, the $8 to $12 range.

REQUEST: What is AT&T's current market share in Kentucky per zone?

RESPONSE: Objection. This request is vague and unclear as to what information is being requested. Additionally, information regarding market share is competitive proprietary information and is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST: In the states that have implemented reform similar to that proposed by AT&T, does evidence show that the long distance rates decreased?

RESPONSE: *See* AT&T's Response to SE Acquisitions First Data Requests Item No. 2.

REQUEST: What benefits does AT&T propose that Kentucky consumers will see if the plan is accepted?

RESPONSE: *See* AT&T's Response to SE Acquisitions First Data Requests Item No. 2.

REQUEST: Provide evidence that the toll market decline is due to access charge levels.

RESPONSE: *See* AT&T's Response to SE Acquisitions First Data Requests Item No. 2.