COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

AT&T'S RESPONSE TO JOINT MOTION OF TWTC, LEVEL 3, AND PAETEC TO SUSPEND PROCEDURAL SCHEDULE

AT&T Communications of the South Central States, TCG of Ohio, BellSouth Long Distance Inc. d/b/a AT&T Long Distance Service, and BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (collectively, "AT&T") submit their response to the Joint Motion to Suspend Procedural Schedule filed by 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") (collectively, "CLECs") on March 17, 2011 ("*Joint Motion*"). In their *Joint Motion*, the CLECs resurrect the same arguments made in their *Joint Filing and Suggestions*[1] filed on February 18, 2011. Additionally, the CLECs argue that rulings of the Court of Appeals in Case No. 2009-CA-1973 could undermine efforts in this case.

For the reasons stated herein, the CLECs' arguments fail. Accordingly, the Kentucky Public Service Commission ("Commission") should halt the CLECs' continued and tiresome efforts to stall this proceeding and deny their *Joint Motion* to suspend the procedural schedule in this case.

[1] *See Joint Filing and Suggestions of TWTC, Level 3, and PAETEC re FCC NPRM* filed by TWTC, Level 3, and PAETEC on February 18, 2011 ("*Joint Filing and Suggestions*").

I. The Commission Should Move Forward and Not Wait on the FCC.

The CLECs once again argue that the Commission should do nothing but wait on the FCC because the *2011 NPRM*[2] raises the "concrete possibility of the Commission's jurisdiction shifting as to the switched access rates of all carriers."[3] As this Commission has acknowledged, there is no reason to wait on the FCC. In its March 11, 2009, *Verizon/Windstream Access Order*,[4] the Commission, while recognizing that "the FCC could issue an order that would preempt all state authority in making determinations on access charges – even for in-state telephone traffic," correctly pronounced that the "mere existence of that possibility does not dissuade this Commission from the need to address intercarrier compensation."[5] Indeed, in its March 16, 2010, National Broadband Plan, the FCC not only did not preempt action by this Commission, it actually "encourage[d] states to complete rebalancing of local rates to offset the impact of lost access revenues … [as] [d]oing so would encourage carriers and states to 'rebalance' rates to move away from artificially low $8 to $12 residential rates that represent old implicit subsidies to levels that are more consistent with costs."[6] Commendably, that is the work this Commission is undertaking by establishing a procedural schedule in this case.

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[2] *See In re Connect America Fund: A National Broadband Plan for Our Future*, 2011 WL 466775 (Notice of Proposed Rulemaking, rel. Feb. 9, 2011) ("*2011 NPRM*").
[3] *Joint Motion* at 3 (citations omitted) (emphasis in original).
[4] *MCI Communications Services, Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, TTI National, Inc., Teleconnect Long Distance Services & Systems Company and Verizon Select Services, Inc. v. Windstream Kentucky West, Inc., Windstream Kentucky East, Inc.-Lexington and Windstream Kentucky, East, Inc.-London*, Case No. 2007-00503, Ky. PSC Order at 5 (Mar. 11, 2009) ("*Verizon/Windstream Access Order*").
[5] *Id.* at 6.
[6] *Connecting America: The National Broadband Plan*, FCC (Mar. 16, 2010), at 142 (citation omitted), available at http://hraunfoss.fcc.gov/edocspublic/attachmatch/DOC-296935A1.pdf.

By continuing to argue that the FCC's *2011 NPRM* is a reason for this Commission to refrain from undertaking reform,[7] the CLECs grossly misread the FCC's *2011 NPRM*, which determined that "[t]he intercarrier compensation system is broken and needs to be fixed."[8] The FCC's notice is not a reason for inaction. To the contrary, it is another reason why this Commission should act – and act now as it is doing.[9] Indeed, the *2011 NPRM* expressly solicits up-to-date information on the progress of state reforms, along with comments on how to encourage the states that adopt reforms and avoid rewarding states that lag behind.[10] Further, the FCC made a point of singling out intrastate rates as the biggest problem, noting the "general industry sentiment that intrastate rates should be reduced first because they are the highest, and because eliminating the discrepancy between intrastate and interstate access charges could reduce arbitrage."[11]

The FCC certainly did not intend to stall state *action* to reduce those intrastate rates, as the CLECs suggest. Just the opposite -- the FCC's concern is that "*lack of action*" by a state "could frustrate our national goals."[12] It is beyond dispute that the intrastate access regime is broken. The choice before the Commission is simple and stark: either (i) do nothing, continue to lag behind the FCC (which adopted partial reforms for interstate rates over a decade ago) and over 20 states (which have tracked the FCC's reforms), and remain part of the problem, or (ii) recognize the need to follow others by adopting modest first-step mirroring reforms that the FCC has already

[7] *See Joint Filing and Suggestions*.
[8] *2011 NPRM,* ¶ 508.
[9] Also for the reasons stated herein, AT&T urges the Commission to set a hearing date in this docket.
[10] *2011 NPRM*, ¶¶ 543-44.
[11] *Id*., ¶ 552.
[12] *Id*., ¶ 548 (emphasis added).

adopted for interstate rates, and seize the opportunity to become part of the solution. Or, put another way, the Commission can sit back and continue the *status quo* while the ILECs and CLECs continue to devour implicit subsidies of high access charges that harm competition and hinder Kentucky's broadband future, or it can give consumers meaningful relief that is long overdue. Stated either way, the answer is obvious. Fortunately, this Commission recognized that and is to be commended for moving forward with this docket and rejecting the ill-advised path of no action that would defer access reform indefinitely to the detriment of the public interest and Kentucky consumers.

A. The *2011 NPRM* Simply Confirms the Need to Reform Intrastate Access Charges.

TWTC, Level 3 and PAETEC ignore the fact that the FCC itself has encouraged states to move ahead now with access reform.[13] Thus, anticipated state action (*i.e.*, reducing intrastate rates to parity with interstate rates and rebalancing extremely low retail rates to levels that most consumers pay, or having CLECs mirror the intrastate rates of the ILECs with which they compete) is not likely to be inconsistent with any further action by the FCC. To the contrary, action by the Commission will be furthering the FCC's goals in the *2011 NPRM*.

The FCC's discussion in the *2011 NPRM* of intercarrier compensation, particularly intrastate switched access charges, further confirms the need for states to effectuate immediate access reform. As the FCC points out, the monopoly-born regime of "[i]ntercarrier compensation has not been reformed to reflect fundamental, ongoing

[13] *See* fn. 6.

shifts in technology, consumer behavior and competition."[14] This lingering relic of the monopoly era has had devastating results for today's consumers, markets, and the economy.

The presence of wireless services, as well as broadband and VoIP, is much more prevalent today than just a few years ago. As the FCC points out, "more than 27 percent of adults live in households with only wireless phones," "[b]roadband Internet access revenues have grown from $13.1 billion in 2003 to $36.7 billion in 2009," while "interconnected Voice over Internet Protocol (VoIP) subscriptions increased by 22 percent" between 2008 and 2009.[15] Meanwhile, "traditional wireline telephone (switched access) minutes plummeted from 567 billion in 2000 to 316 billion in 2008," and "switched access lines decreased by 10 percent" between 2008 and 2009.[16] This decline in compensable minutes results in "additional pressures on the system and uncertainty for carriers."[17]

The current system actually provides carriers the "perverse incentive" to continue to maintain and invest in legacy networks in order to collect access revenues, and the *disincentive* to transition to IP networks, thereby "hindering the transformation of America's networks to broadband."[18] It also provides "incentives for wasteful arbitrage" by carriers that "mask the origination of voice traffic to reduce or avoid payments, creating 'phantom traffic,'" or inflate traffic volumes, thereby increasing payments received, known as "traffic pumping."[19] Meaningful access reform will reduce arbitrage

[14] *Id*.
[15] *Id*. ¶ 8.
[16] *Id*.
[17] *Id.*, ¶ 495.
[18] *Id.*, ¶ 506.
[19] *Id.*, ¶ 7.

and allow carriers to devote the "hundreds of millions of dollars"[20] spent annually on these practices and the surrounding disputes on "capital investment and other more productive uses." [21]

This proceeding provides the Commission the opportunity to complete, without any need to wait for concurring FCC activity, the process it started more than 10 years ago when it approved AT&T Kentucky's alternative regulation plan requiring AT&T Kentucky to reduce its intrastate switched access rates to mirror its interstate rates and structure. Accordingly, the Commission should reject the *Joint Motion* to suspend the procedural schedule filed by the CLECs which stand to continue to gain from the high intrastate switched access rates they charge other carriers, and eliminate once and for all that "looming specter" of the need for comprehensive intrastate access reform that has been "over this Commission for a significant period of time."[22]

B. The FCC's *2011 NPRM* Is a Call to Action, Not an Excuse for Inaction.

The CLECs have on multiple occasions taken extra effort to draw this Commission's attention to the FCC's notice that states that the access charge system – and particularly the system of intrastate switched access rates - "is broken and needs to be fixed."[23] Rather than taking the correct lesson from the FCC's statement, however, the CLECs take the untenable position that, even though everyone agrees that high intrastate switched access charges pose serious problems, the Commission should abdicate its authority over intrastate communications and do *nothing* in the hope that the FCC might someday poke its head into this state's intrastate sphere and take care

[20] *Id*.
[21] *Id*. ¶ 507.
[22] *Verizon/Windstream Access Order* at 5.
[23] *Id.*, ¶ 508.

of things. Inaction – in the face of serious and undisputed problems, and after the Commission is already years behind the FCC and behind states that have adopted and are adopting reforms – is a terrible idea for many reasons.

First, 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.[24] To the contrary, waiting for intercarrier compensation reform from the FCC has been the equivalent of waiting for Godot. The FCC has been talking about comprehensive reforms for a decade, and none of the long-promised reforms has ever materialized. Parties provided a decade's worth of comments to the FCC in previous reform proceedings, and the FCC has not acted on any of them. The FCC's "reform" dockets bring to mind the image of the Ark of the Covenant languishing deep in a forgotten warehouse at the end of *Raiders of the Lost Ark.* And that is exactly (and wrongly) what certain parties want to do with the reforms that Kentucky consumers urgently need – bury them, and hope that the Commission forgets about them.

The FCC's *2011 NPRM* provides no support for this result. Certainly, the FCC has issued a notice of *proposed* rulemaking saying that access charges are a big problem and that something needs to be done. But that is hardly news:

- In April 2001, the FCC issued an NPRM saying it was "essential to re-evaluate these existing intercarrier compensation regimes in light of increasing competition and new technologies."[25] But the FCC did nothing, and four years passed.

- In March 2005, the FCC issued another NPRM acknowledging "the urgent need to reform the current intercarrier compensation rules" and saying (four years after

[24] To illustrate the "speed" with which the FCC may be planning to move on ICC reform, it should be noted that the proposed time frame after which the FCC indicated it would take action on reforming ICC if states have not done so is *four years*. *2011 NPRM*, ¶ 534. This is hardly expedient action. Kentucky consumers cannot wait another four years (or more) for reform that is already long overdue.

[25] *In re Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd. 9610, ¶ 2 (2001).

it had *opened* previous notice) that it would "*begin* the process of replacing the myriad existing intercarrier compensation regimes with a unified regime designed for a market characterized by increasing competition and new technologies."[26] But the FCC did nothing, and three and a half more years passed.

- In November 2008 – even under the compulsion of a *mandamus* – the FCC merely issued a narrow order on reciprocal compensation and yet another NPRM seeking comments on proposals for reforms to address the "fundamental changes" in the marketplace and the "arbitrage opportunities created by a patchwork of above-cost intercarrier compensation rates."[27] Yet again, the FCC did nothing, and more than two more years passed.

And here we are reading still another NPRM and listening to still more cries of "wait for the FCC." The *2011 NPRM* itself acknowledges that "[a]lthough the Commission has sought comment on a variety of proposals over the last decade to comprehensively reform intercarrier compensation, such efforts stalled, leaving the current antiquated rules in place."[28]

Even if the FCC really does something this time, action on intrastate rates is neither imminent nor assured. The latest NPRM is simply one of some 60 separate rulemakings under the *Connect America* umbrella, and many of those rulemakings began well before the one on intercarrier compensation. Even in the IC rulemaking, the FCC's first priority is a series of stop-the-bleeding initiatives designed to reform the federal universal service fund and to curb arbitrage in the *inter*state arena.[29] If and when the FCC ever does turn to access charges, the FCC's "first option" will be to rely "on the existing roles played by the states and the Commission with respect to

[26] *In re Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd. 4685, ¶¶ 1, 3 (2005).
[27] *In re High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Universal Service Contribution Methodology, Numbering Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services*, 24 FCC Rcd. 6475, ¶ 39 (2008).
[28] *2011 NPRM*, ¶ 501
[29] *Id.*, ¶¶ 162-388, 603-677.

regulation of rates."[30] In other words, the FCC would look only to reforms of rates for interstate and local traffic, while "[s]tates would otherwise continue to be responsible for reforming intrastate access charges."[31] So if the do-nothing mentality prevails, it is quite likely this Commission will spend years waiting for the FCC, only to hear the FCC say "we're waiting for *you*."[32]

Finally, the CLECs' motion rests on an incorrect view that the FCC's *2011 NPRM* somehow endorses or excuses states to do nothing about the "broken" regime of intrastate switched access charges. The FCC's actual words compel the opposite conclusion. The FCC is fully aware that some states "have undertaken intrastate access charge reform measures," including the interstate-intrastate mirroring approach that AT&T, Sprint Nextel and others have proposed.[33] Far from disapproving of such measures, the *2011 NPRM* "seek[s] comment on what steps the Commission should take to *encourage* states to reduce intrastate intercarrier compensation rates and how we could do so *without* penalizing states that have already begun" to reform intrastate rates.[34] The FCC has even proposed that states that have adopted meaningful access reforms would be first in line (or perhaps the only states in line) for the first phase of federal broadband funds, and has "request[ed] accurate information concerning the status of intrastate access state reform activity to determine which states" have

[30] *Id*. ¶ 537.
[31] *Id*. ¶ 534.
[32] Even if the FCC does decide that it should tackle intrastate access rates, it has acknowledged the "risk of litigation and disputes" over its legal authority to regulate intrastate charges, which could lead to further delay and uncertainty. *2011 NPRM*, ¶ 537. Thus, the FCC has acknowledged that allowing the states to handle rates within their long-established jurisdiction would minimize litigation risk and "provid[e] greater stability regarding the reform." *Id*.
[33] *2011 NPRM*, ¶ 543 and fns. 816, 819.
[34] *Id*. ¶ 544 (emphasis added).

implemented enough reform to qualify for federal funds.[35] Indeed, the FCC expressly singled out "mirroring interstate rates" as a possible criterion for federal support.[36]

Just as the FCC is seeking to encourage state *action*, it offers no support for state *inaction*. The *2011 NPRM* seeks comment on how to encourage reform "without . . . rewarding states that have not yet engaged in reform."[37] Its principal concern is that "lack of action" by the states on intrastate rates "could frustrate our national goals associated with intercarrier compensation reform."[38] No one could read the *2011 NPRM* as endorsing the do-nothing approach that the CLECs advocate here. The Commission should deny the Joint Motion and move forward with this case pursuant to the procedural schedule set forth on March 10, 2011, and should set a hearing date.

II. The Commission Should not Wait on the Kentucky Court of Appeals.

The CLECs also propose that the Commission should wait on the Kentucky Court of Appeals to rule on the jurisdictional issue[39] pending before it.[40] But that is no reason for further delay. The Franklin Circuit Court, the Kentucky Court of Appeals, and the Kentucky Supreme Court all have denied Windstream's repeated requests to stay the Commission proceeding in the Verizon/Windstream access case[41] pending the same appeal. The Franklin Circuit Court, after hearing arguments on Windstream's motion to stay the Commission proceeding, denied the motion finding that Windstream

[35] *Id*. ¶ 544 and fn. 819.
[36] *Id*. ¶ 544.
[37] *2011 NPRM*, ¶ 544.
[38] *Id*. ¶ 548.
[39] The issue pending before the Kentucky Court of Appeals is whether the Commission has jurisdiction over the switched access rates of Windstream, a carrier that elected alternative regulation under KRS 278.543. The Franklin Circuit Court opined it did and Windstream appealed that decision. *See* fn. 42, *infra*.
[40] *Joint Motion* at 4 ("Joint Movants request that the Commission suspend the procedural schedule until either the Court of Appeals or the FCC rules."). Depending on whether the Court of Appeals or FCC rules first, it seems likely the CLECs would then ask the Commission to wait until the other one rules, or to wait on some other event.
[41] *See* fn. 4, Ky. PSC Case No. 2007-00503.

"fails to meet the standard for injunctive relief under CR 65 and *Maupin v. Stansbury*, 575 S.W.2d 695 (Ky. App., 1978)."[42] In reaching its conclusion, the court stated:

> In weighing the equities involved, the Court finds that granting injunctive relief pending appeal will likely result in *harm to both the public interest and the intervening defendants*, while the harm to Windstream is limited to the time and expense associated with having to participate in an administrative proceeding. … *[I]f the rates currently being charged by Windstream for switched access service in a captive, non-competitive market are ultimately determined to be unfair, unjust and unreasonable, then maintaining the injunction will only cause additional harm to both the defendants and the public*.[43]

In any event, the jurisdictional issue before the Court of Appeals involves an incumbent local exchange carrier ("ILEC") that elected alternative regulation under KRS 278.543. The CLECs seeking to delay this case are not ILECs that may elect alternative regulation under KRS 278.543. Thus, any ruling by the Court of Appeals on that jurisdictional issue would have no effect on the CLECs or on any other competitive local exchange carriers or the rural local exchange carriers ("RLECs").

The Kentucky Court of Appeals, citing the Circuit Court's reasoning, also denied Windstream's motion for injunctive relief filed before it.[44] In addition to citing the Circuit Court's reasoning, the court stated:

> Other than having to participate in the administrative proceedings while the appeal is proceeding, Windstream has not established it will suffer any harm, let alone irreparable harm, in the event it does not obtain any relief. Furthermore, *we agree with the PSC and Verizon that the equities lie in favor of denying relief, and there is most likely not a substantial chance of success in the pending appeal*, although this order shall not be construed as a ruling on the merits of the pending appeal.[45]

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[42] Order Denying Injunctive Relief (Dec. 1, 2009) at 1, *Windstream Kentucky West, LLC, et al. v. Kentucky Public Service Commission*, Commonwealth of Kentucky, Franklin Circuit Court, Division I, Civil Action No. 09-CI-00552.
[43] *Id.* at 2 (emphases added).
[44] *See* Order Denying Motion for CR 65.08 Relief, *Windstream Kentucky East, LLC, et al. v. Kentucky Public Service Commission, et al.*, Commonwealth of Kentucky, Court of Appeals, No. 2009-CA-001973-MR.
[45] *Id.* at 10 (emphasis added).

And so do the equities lie in favor of denying the relief requested by the CLECs in its *Joint Motion*. The Commission should deny the CLECs' *Joint Motion* just as the Kentucky Supreme Court denied Windstream's motion to vacate or modify the Court of Appeals' Order denying the stay.[46] The longer the delay in access reform in Kentucky the more harm there is to the public interest and Kentucky consumers.

Furthermore, the Franklin Circuit Court opinion, although on appeal, is the current state of the law. It has not been overturned or stayed, and, in fact, as explained *infra*, Windstream's numerous motions for injunctive relief to stay the Commission proceeding in the Verizon/Windstream access case pending the appeal were denied by three different courts. The Commission should do the same and deny the CLECs' *Joint Motion* and continue on its path of pursuing access reform in the interest of Kentucky consumers. Also for these reasons, the Commission should set a hearing date.

III. AT&T's Proposed Plan Provides a Simple and Straightforward Approach to Access Reform.

The CLECs' suggestion that they do not know to what proposed AT&T Plan the Commission refers in its procedural schedule is not credible. AT&T already has filed and served on CLECs and other parties to this proceeding its proposed plan, and, for convenience, is attaching it again as **Exhibit A** to this pleading**.** AT&T's Plan will bring meaningful and long-overdue relief, quickly, to Kentucky consumers by requiring the ILECs to reduce their intrastate switched access rates to mirror their corresponding interstate switched access rates and structure, and requiring the CLECs to mirror the intrastate switched access rates and structure of the ILECs with which they compete.

[46] Order Denied Motion to Vacate or Modify the Order of the Court of Appeals Entered November 10, 2009, Pursuant to CR 65.09 (Aug. 26, 2010), *Windstream Kentucky West, LLC, et al. v. Kentucky Public Service Commission et al.,* 2010-SC-000400-I.

A review of the ILECs' and CLECs' intrastate switched access rates reveals most are significantly higher (in some cases nearly 100% higher) than their corresponding interstate access rates.[47] As a result, the local rates of the ILECs and CLECs are relatively low and are being unfairly subsidized by other Kentucky consumers. It is no surprise, therefore, that the CLECs are urging the Commission to continue to do nothing while they continue to reap windfalls through these subsidy mechanisms, which do not promote consumer welfare or advance competition on the merits. In fact, these subsidies distort investment – and effectively retard new investment in broadband services – and create an artificial, regulatory-induced competitive disadvantage for wireline long-distance providers. These subsidies prohibit increased competition that will ultimately benefit Kentucky's consumers.

As the FCC has observed, economically efficient competition and the consumer benefits it yields cannot be achieved as long as carriers seek to recover a disproportionate share of their costs from other carriers, rather than from their own end users.[48] The removal of these implicit subsidies is consistent with the Kentucky legislature's intent to level the competitive landscape and stimulate the economy through deregulation, as well as with the Commission's "pro-competitive policy for all geographic areas of Kentucky."[49] The Kentucky General Assembly enacted legislation

[47] The only ILEC in Kentucky that has reduced its intrastate switched access rates to mirror its interstate rates and structure is AT&T Kentucky.

[48] *See generally Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board On Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket no. 990249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (May 31, 2000) ("*CALLS Order*") at ¶ 129 (such irrational access rate structures "lead to inefficient and undesirable economic behavior.").

[49] *In the Matter of An Inquiry into Local Competition Universal Service, and the Non-Traffic Sensitive Access Rate*, Adm. Case No. 355, Ky. PSC Order at 51 (Sept. 26, 1996).

providing that "consumers benefit from market-based competition that offers consumers of telecommunications services the most innovative and economical services." KRS § 278.546(4). By acting now to reform intrastate switched access charges in Kentucky, the Commission will enable Kentucky's consumers to receive the benefit of the "most innovative and economical services."

Should the Commission grant the CLECs' *Joint Motion* to delay the desperately needed reform of Kentucky's intrastate access charges, Kentucky consumers will continue to be left behind in the transition from wireline to IP-based technologies, and Kentucky will risk being excluded from having access to the Connect America Fund ("CAF") or to federal high-cost funding.[50] Therefore, the Commission should deny the CLECs' *Joint Motion*.

IV. Conclusion

Kentucky's regime of high intrastate switched access charges *is* broken, and has been for some time. Further delay of access reform maintains the *status quo* of high intrastate access charges with implicit subsidies, thus continuing harm to Kentucky's consumers, impeding competition, unjustly discriminating against certain market segments, and slowing the deployment of new technologies. For the reasons stated herein, the Commission should deny the CLECs' *Joint Motion* to suspend the procedural schedule and set a hearing date in this case.

[50] The FCC, in its *2011 NPRM*, seeks comment on whether it should "decline to provide any revenue recovery for intrastate rate reductions for states that have not begun intrastate access reform by a specified date" or whether it should "continue to limit access to the CAF only to states that have undertaken intrastate access reforms," or finally whether it "should (or could) … phase out federal high-cost funding in states that have not implemented reform?" *Id.* ¶ 549 (citations omitted).

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