COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

AT&T'S COMMENTS IN RESPONSE
TO THE COMMISSION'S MARCH 22, 2012, ORDER

The Kentucky Public Service Commission ("Commission") asked in its March 22, 2012, Order how the Kentucky Commission should proceed in the wake of the FCC's *ICC/USF Order*[1] exerting exclusive FCC jurisdiction over terminating access rates. The Commission also requested comments on how the unique Kentucky-specific NTSRR (non-traffic sensitive revenue requirement) rate element should be addressed under the FCC's Order. The Commission also asked about carriers' intentions to implement the Access Recovery Charge ("ARC").

Notwithstanding this Commission's conclusion that the *ICC/USF Order* left it with "limited" jurisdiction, it has a critical role to play in ensuring that the FCC's reforms are fully and properly implemented. Chief among its duties is responsibility for ensuring that carriers implement the FCC-mandated July 1 access reductions. Consistent with that

[1] *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform: Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*ICC/USF Order*"). The Order was published in the Federal Register on November 29 and the majority of its provisions were effective December 29, 2011.

role, AT&T[2] recommends that the Commission require all local exchange carriers ("LECs") – incumbent LECs ("ILECs") and competitive LECs ("CLECs") alike - to submit key data by May 10, 2012, to demonstrate that carriers make the reductions in their intrastate access rates required by the *ICC/USF Order*.

Moreover, the Commission must ensure that those carriers that currently assess the NTSRR on terminating access implement the revenue reductions associated with NTSRR as required under the *ICC/USF Order.* All carriers ultimately must eliminate that charge altogether as of July 1, 2013.

With regard to the ARC, the FCC has reserved unto itself exclusive jurisdiction to determine whether each ILEC is implementing the ARC correctly (CLECs are not permitted to implement an ARC). Thus, while this Commission's determinations in ensuring access reductions are being properly implemented will, in turn, feed into the establishments of an ILEC's Eligible Recovery, this Commission has no role to play in evaluating where and how an ILEC implements the ARC.

I. SUMMARY OF INTERCARRIER COMPENSATION REFORM IN THE FCC'S *ICC/USF ORDER*

The *ICC/USF Order* comprehensively reforms the national intercarrier compensation regime by adopting a uniform national bill-and-keep framework as the ultimate end-state for all telecommunications traffic exchanged with a LEC. From an access perspective and in keeping with its stated direction toward a national bill-and-keep end-state, the FCC plan first requires adjustments to terminating access and various transport rates.[3]

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[2] AT&T Kentucky, AT&T Communications of the South Central States, LLC, AT&T Long Distance Services, and TCG Ohio ("collectively, "AT&T"),

[3] *ICC/USF Order* at ¶¶ 739, 764.

A. Rate Caps. The transition to bill-and-keep started with a cap that was imposed on all interstate switched access rates at their December 29, 2011, levels. For price cap carriers (such as AT&T Kentucky, Windstream, and Cincinnati Bell), all intrastate switched access rates, originating and terminating, are also capped.[4] For rate of return carriers (all rural LECs[5]), the cap on intrastate switched access rates is limited to terminating access and certain transport charges.[6] For CLECs competing with price cap carriers, all intrastate switched access rates, originating and terminating, are capped, but for CLECs competing with rate-of-return carriers there is no cap on originating access rates.[7]

B. Reduction of Intrastate Access Rates to Parity. The transition continues by bringing each carrier's intrastate terminating rates to parity with its respective interstate rates and rate structures by July 1, 2013. This occurs in two steps, with the first reduction required to be implemented in tariff filings that are to be effective on July 1, 2012. These initial reductions are more complicated than a simple percentage reduction in each LEC's intrastate rates (although such an approach would be consistent with the FCC's rules assuming no change in the LEC's rate structure, and may be favored by some LECs). Rather, the rules promulgated by the FCC require all LECs to establish new rates that remove 50 percent of the difference in revenues generated by applying December 29, 2011, interstate and intrastate terminating access

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[4] 47 C.F.R. § 51.907.

[5] The RLECs are Ballard Rural Telephone Cooperative; Brandenburg Telephone Company, Inc.; Duo County Telephone Cooperative Corporation; Foothills Rural Telephone Cooperative; Gearhart Communications Co., Inc.; Highland Telephone Cooperative, Inc.; Logan Telephone Cooperative, Inc.; Mountain Telephone Cooperative, Inc.; North Central Telephone Cooperative, Inc.; Peoples Mountain Rural Telephone Cooperative; South Central Rural Telephone Cooperative; Thacker-Grigsby Rural Telephone Company, Inc.; the TDS Companies (Leslie County Telephone Company, Inc., Lewisport Telephone Company, Inc., Salem Telephone Company); West Kentucky Rural Telephone Cooperative.

[6] 47 C.F.R. § 51.909.

[7] 47 C.F.R. § 51.911.

rates to FY2011 intrastate demand.[8] In the second step, all LECs that have not already done so are required to change their intrastate access rate structure to match their interstate structure, and to set all affected intrastate access rate elements to complete parity with their interstate counterparts.[9]

C. Reduction to Bill-and-Keep. After the rates and rate structures are at parity, both intrastate and interstate terminating switched access rates are phased down over several years to a bill-and-keep methodology. *See* Table 1 below.[10] The end-date of this process for price cap carriers is July 1, 2018, and for rate of return carriers, it is July 1, 2020.

Table 1: Summary of FCC's Timelines for Transition to Bill-and-Keep

Effective Date	For Price Cap Carriers and CLECs that benchmark access rates to price cap carriers**	For Rate-of-Return Carriers and CLECs that benchmark access rates to rate-of-return carriers
Effective Date of the FCC rules	All intercarrier switched access rate elements, including interstate and intrastate originating and terminating rates and reciprocal compensation rates are capped.	All interstate switched access rate elements, including all originating and terminating rates and reciprocal compensation rates are capped. Intrastate terminating rates are also capped.
July 1, 2012	Intrastate terminating switched end office and transport rates, originating and terminating dedicated transport, and reciprocal compensation rates, if above the carrier's interstate access rate, are reduced by 50 percent of the differential between the rate and the carrier's interstate access rate.	Intrastate terminating switched end office and transport rates, originating and terminating dedicated transport, and reciprocal compensation rates, if above the carrier's interstate access rate, are reduced by 50 percent of the differential between the rate and the carrier's interstate access rate.
July 1, 2013	Intrastate terminating switched end office and transport rates and reciprocal compensation, if above the carrier's interstate access rate, are reduced to parity with interstate access rate.	Intrastate terminating switched end office and transport rates and reciprocal compensation, if above the carrier's interstate access rate, are reduced to parity with interstate access rate.
July 1, 2014	Terminating switched end office and reciprocal compensation rates are reduced by one-third of the differential between end office rates and \$0.0007.*	Terminating switched end office and reciprocal compensation rates are reduced by one-third of the differential between end office rates and \$0.005.
July 1, 2015	Terminating switched end office and reciprocal compensation rates are reduced by an additional one-third of the original	Terminating switched end office and reciprocal compensation rates are reduced by an additional one-third of the original differential to

[8] *See* 47 C.F.R. §§ 51.907, 51.909, 51.911.
[9] *ICC/USF Order* at ¶ 801, Figure 9.
[10] *Id.*at ¶ 801, Figure 9.

	differential to $0.0007.*	$0.005.*
July 1, 2016	Terminating switched end office and reciprocal compensation rates are reduced to $0.0007.*	Terminating switched end office and reciprocal 2compensation rates are reduced to $0.005.*
July 1, 2017	Terminating switched end office and reciprocal compensation rates are reduced to bill-and-keep. Terminating switched end office and transport are reduced to $0.0007 for all terminating traffic within the tandem serving area when the terminating carrier owns the serving tandem switch.	Terminating end office and reciprocal compensation rates are reduced by one-third of the differential between its end office rates ($0.005) and $0.0007.*
July 1, 2018	Terminating switched end office and transport are reduced to bill-and-keep for all terminating traffic within the tandem serving area when the terminating carrier owns the serving tandem switch.	Terminating switched end office and reciprocal compensation rates are reduced by an additional one-third of the differential between its end office rates as of July 1, 2016 and $0.0007.*
July 1, 2019		Terminating switched end office and reciprocal compensation rates are reduced to $0.0007. *
July 1, 2020		Terminating switched end office and reciprocal compensation rates are reduced to bill-and-keep.*

* Transport rates remain unchanged from the previous step.

** CMRS providers are subject to mandatory detariffing. Nonetheless, CMRS providers are included in the transition to the extent their reciprocal compensation rates are inconsistent with the reforms adopted by the Commission.

D. VoIP-PSTN Traffic. The FCC's intercarrier compensation rules apply to "'traffic exchanged over PSTN facilities that originates and/or terminates in IP format'" and is *not* limited to interconnected VoIP (*i.e.*, two-way services).[11] With regard to prospective payment obligations for VoIP traffic exchanged in traditional Time Division Multiplexing ("TDM") format between two carriers, the default intercarrier compensation rates for "toll" VoIP-PSTN traffic (including both interstate and intrastate "toll" VoIP-PSTN traffic) are interstate access rates.[12] Reciprocal compensation rates apply to "non-toll" VoIP-PSTN traffic.[13] All traffic delivered to the end user in IP and exchanged in TDM is now subject to symmetrical originating and terminating charges (*i.e.*, if a "toll"

[11] *Id.* at ¶ 1399; 47 C.F.R. § 51.913.
[12] *Id.*
[13] *Id.*

call originates in TDM and terminates in IP, interstate access charges apply on both the originating and terminating ends). Carriers may tariff at both the state and federal levels these default rates for toll traffic in the absence of an agreement for different compensation.[14]

E. CMRS Traffic. CMRS providers are subject to the transition applicable to price cap carriers.[15] The Commission adopted bill-and-keep as the default methodology for all non-access CMRS-LEC traffic *effective July 1, 2012*.[16]

F. Transitional Recovery Mechanism. The FCC adopted a transitional federal recovery mechanism to allow price cap and rate-of-return ILECs to recover a defined portion of the revenues that are reduced as a result of the required access charge reforms.[17] That mechanism first requires each ILEC to calculate its "Eligible Recovery." The *ICC/USF Order* provides that a carrier may seek to recover a limited amount of its Eligible Recovery from its end users through a monthly fixed charge called an Access Recovery Charge ("ARC"). A carrier whose Eligible Recovery exceeds the amount it is permitted to receive through assessment of the ARC will be entitled to recover the difference through explicit support from the Connect America Fund ("CAF"). CLECs are not eligible to obtain recovery through either of these mechanisms, but may instead recover any reduced revenues through end-user charges.[18]

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[14] *Id.*
[15] *ICC/USF Order* at ¶ 806.
[16] *Id.,* 47 C.F.R. § 20.11 and Part 51.
[17] *ICC/USF Order* at ¶¶ 852-853.
[18] *Id.*

II. ROLE OF THE COMMISSION IN IMPLEMENTING REFORM

Although AT&T agrees with the Commission's finding that the *ICC/USF Order* has circumscribed its ability to set intrastate terminating access rates, the fact remains that the Commission has an essential part to play in ensuring that the reductions prescribed in that Order are implemented completely and properly. The *ICC/USF Order* itself explicitly recognized that the state commissions will "play a critical role implementing and enforcing intercarrier compensation reforms."[19]

The FCC emphasized that "state oversight of the transition process is necessary to ensure that carriers comply with the transition timing and intrastate access charge reductions" required in the Order.[20] Because rates for intrastate access traffic will remain in intrastate tariffs under the *ICC/USF Order,* the Commission will have to "monitor compliance with [the] rate transition; review how carriers reduce rates to ensure consistency with the uniform framework; and guard against attempts to raise capped intercarrier compensation rates, as well as unanticipated types of gamesmanship."[21] In this regard, the Commission should make sure that "carriers are not taking actions that could enable a windfall and/or double recovery."[22] To properly carry out this work, the Commission, as soon as possible, should undertake the following:

A. Require Early Filing of Access Data. As AT&T noted earlier, the reductions in intrastate terminating access rates that all carriers are required to put into

[19] *Id.* at ¶ 813
[20] *Id.*
[21] *Id.*
[22] *Id.* Additionally, the Commission retains oversight of interconnection agreement negotiations and arbitrations to the extent carriers seek to implement the access charge reductions through such agreements. *Id.*

effect as of July 1, 2012, are not simple or straightforward percentage reductions in rates. Rather, the rules promulgated by the FCC establish a more involved process under which all LECs establish new rates to reflect a 50 percent reduction in the revenues generated by their interstate and intrastate rates at a specified demand level.[23]

These calculations necessarily involve a set of variables, such as interstate and intrastate rate elements and rate structure, and FY 2011 usage levels. The rules vest the LECs with a certain degree of discretion in determining the final intrastate rates that will implement the required revenue reduction. How a carrier implements those calculations – and more to the point, whether it does so properly -- may not be readily apparent from the simple filing of a tariff, which might otherwise only show the final rates the carrier proposes to charge.

Without additional data, then, the Commission cannot fulfill its responsibility to enforce compliance from the tariff alone. Thus, in order to make it easier for the Commission, its Staff, and interested parties to ensure the July 1 access reductions being implemented in Kentucky meet the requirements of the *ICC/USF Order*, the Commission should require all carriers providing intrastate access services in Kentucky to provide key data in this proceeding well in advance of the July 1, 2012, effective date. AT&T would suggest this information be provided no later than May 10, 2012, to ensure ample time for review and clarification. The specific information to be filed should include the following data points:

[23] *See* 47 C.F.R. §§ 51.907, 51.909, 51.911.

1. Fiscal Year 2011[24] intrastate demand for each rate element included in "Transitional Intrastate Access Service" as the term is defined in 47 C.F.R. § 51.903(j).

2. All intrastate access rates in effect as of December 29, 2011.

3. All interstate access rates in effect as of December 29, 2011.

4. If the carrier's intrastate rate structure and the interstate rate structure are not the same, the carrier should provide an explanation, including all calculations and underlying assumptions, of how Fiscal Year 2011 intrastate demand for Transitional Intrastate Access Service will be mapped into its interstate rate structure to determine "revenue from Transitional Intrastate Access Service at the carrier's interstate access rates" for purposes of the FCC-mandated revenue reduction calculations. 47 C.F.R. §§ 51.907(b)(2), 51.909(b)(2), 51.911(b).

5. A full description of the methodology the carrier will use to set revised rates to reflect the calculated revenue reduction.[25]

6. A full description of the rate structure the carrier will opt to utilize as of July 1, 2012, as appropriate under 47 C.F.R. §§ 51.907 (price cap carriers), 51.909 (rate-of-return carriers), and 51.911 (CLECs).

The first three data points are self-explanatory, as they serve as the foundation for the revenue calculations the LECs are required to undertake. The remaining three points are also important, especially insofar as in many (if not most) cases carriers' interstate and intrastate rate structures and elements do not precisely align. Thus, the "mapping" required under data point 4 would ensure, for example, that a LEC is not inappropriately assigning a disproportionate amount of intrastate usage to a high interstate rate element that in fact has little or no usage, or that the LEC is not "mapping" its intrastate demand into its interstate rates in a manner that fails to reflect how the LEC would have charged carriers had the usage, in fact, been interstate. Such practices, if left unchecked, could result in a higher interstate revenue figure, which in

[24] Fiscal Year 2011 means October 1, 2010 through September 30, 2011. 47 C.F.R. §51.903.

[25] *See* 47 C.F.R. §§ 51.907(b)(2)(iv) and (v); 51.909(b)(2)(iv) and (v).

turn ultimately would result in a lower total revenue reduction when interstate revenues are subtracted from the intrastate revenues.

Similarly, data point 5 would require the LEC to explain how it translated the properly calculated revenue difference into new intrastate rates. As with the information discussed in data point 4, this information is necessary to deter carriers from making cosmetic rate reductions to intrastate rate elements that have little or no usage associated with them, while leaving the rate elements with higher demand relatively unchanged.

Finally, the information sought in data point 6 reflects the choice a LEC with divergent interstate and intrastate rate structures is required to make with its July 1, 2012, rates. In the second phase of the FCC-ordered reforms, which will be effective July 1, 2013, any carrier that has different rate structures for intrastate and interstate switched access service will be required to adopt a common structure based on its interstate configuration.[26] In the upcoming first set of reductions, however, a carrier may elect to modify its rates using its intrastate access rate structure or it may elect to apply its interstate access rate structure and interstate rates.[27] In the latter case the carrier will be entitled to assess a transitional per-minute charge based on end office switching minutes. The Commission thus should require the LECs to specify the election they are making under these provisions, and, if a carrier elects to apply its

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[26] *See* 47 C.F.R. §§ 51.907(c) and 51.909(c).

[27] *See* 47 C.F.R. § (51.907(b)(2)(iv) and (v) for price cap carriers; 47 C.F.R. § 51.909(b)(2)(iv) and (v) for rate-of-return carriers; and 47 C.F.R. § 51.911(b)(4) and (5) for CLECs.

interstate rate structure and rates, demonstrate how the transitional charge was calculated and applied.[28]

Requiring carriers to provide this information now, well in advance of the actual effective date of the tariffs, will save the Commission's resources and help prevent the unnecessary filing of complaints after July 1. By filing this information early, the Commission will put itself, the Staff, and the carriers in the best position to review new access rates, get clarification regarding the data if necessary, and work to resolve any concerns well before the new rates would take effect.

B. Enter a Protective Order. Some parties have entered into confidentiality agreements between and among themselves for the exchange of confidential information in this case, but not all carriers have. In furtherance of this approach, therefore, the Commission should immediately issue a protective order in this case to allow the confidential filing and appropriately limited review of the data described above. AT&T is attaching a proposed Protective Order as **Attachment A** hereto that contains substantially the same or similar terms as agreed to in the confidentiality agreements that some parties have entered into among themselves in this case.

C. Impose Enforcement Provisions. To encourage all carriers to file this information, and to ensure that the July 1 access reductions are implemented as the *ICC/USF Order* intends, the Commission should declare a presumption that any carrier failing to file the data ordered by the Commission has failed to properly reform its intrastate access rates in accordance with the *ICC/USF Order*, and that, as a result, the

[28] The new FCC rules in fact require carriers electing to establish new intrastate rates in this manner to "notify the appropriate state regulatory authority of their election" in the new tariff filings. 47 C.F.R. § 51.907(b)(2)(v); 47 C.F.R. § 51.909(b)(2)(v).

carrier's intrastate access tariff rates are null and void as of July 1, 2012, pending a full investigation of the rates and supporting data.

This approach was previously used by the Massachusetts Department of Telecommunications and Cable to secure compliance with access tariff filing deadlines. *See* Order on Compliance Tariffs at 1, DTC 07-9 (June 16, 2010), attached hereto as **Attachment B** ("For Carriers that have not filed tariffs to comply with the Department's rate cap in this case by the June 21, 2010 deadline, the Department hereby determines that all existing intrastate switched access tariffs in effect and on file with the Department as of June 22nd, which are above the tariffed rate of the dominant incumbent local exchange carrier ("ILEC") of the region, are unjust, unreasonable, and in violation of Department Order. [Citation omitted]. Unjust and unreasonable charges are prohibited and unlawful, and carriers shall not be required to pay them. [citation omitted]").

More recently – and specifically in connection with the tariff filings required by the *ICC/USF Order* – the Ohio Public Utilities Commission, the Maryland Public Service Commission, and the Alabama Public Service Commission all adopted orders to enforce compliance with the FCC's requirements. The Ohio PUC ruled that "[f]or those local exchange companies that fail to file the requisite application on a timely basis, the applicable effective intercarrier compensation rates will be deemed as unjust and unreasonable as of July 1, 2012, and such carriers will be prohibited from charging for intrastate intercarrier traffic until they have Commission approved tariffs."[29] In particular, the Maryland PSC determined that if appropriate tariffs to comply with the *ICC/USF*

[29] *See* Order at 3, *In the Matter of the Commission's Investigation into Intrastate Carrier Access Reform Pursuant to Sub. S.B. 162*, The Public Utilities Commission of Ohio, Case No. 10-2387-TP-COI (Feb. 29, 2012), attached hereto as **Attachment C**.

Order are not filed as set forth in its notice, "carriers will be unable to lawfully charge for intrastate access traffic until such time as the PSC accepts for filing appropriate tariff revisions."[30] Most recently, the Alabama PSC ruled that "[f]or those local exchange companies that fail to file the requisite application on a timely basis, the applicable effective intercarrier compensation rates will be deemed as unjust and unreasonable as of July 1, 2012, and such carriers will be prohibited from charging for intrastate intercarrier traffic until they have Commission approved tariffs."[31] A similar ruling by the Commission in this case will provide a strong incentive to LECs to ensure the necessary filings are made on time and in full compliance with the *ICC/USF Order*.

D. Allow for Dispute Resolution. Given the large number of filings to be made, there is always the possibility of disputes regarding whether rates have been calculated correctly. AT&T plans to carefully review all carriers' intrastate access and VOIP-PSTN tariffs (and underlying supporting data pursuant to the terms of a Protective Order entered in this case), and attempt to negotiate with any carriers that improperly reflect the FCC's requirements in an effort to resolve a dispute without the need for Commission action. To facilitate such informal procedures the Commission should clarify that the forthcoming Protective Order will permit all interested stakeholders that execute the appropriate confidentiality agreement to have access to the completed data templates that the carriers are required to submit on May 10, and that carriers will in fact provide electronic copies of the tariff supplements and supporting templates to such

[30] *See* Notice of Required Tariff Filings, Maryland Public Service Commission (Mar. 29, 2012), attached hereto as **Attachment D**.

[31] *See* Order Implementing Intercarrier Compensation Reform and Addressing Treatment of TSF Revenues by Incumbent Local Exchange Carriers at 9, *In Re: Alabama's Incumbent Local Exchange Carriers – Intercarrier Compensation*, Alabama Public Service Commission, Docket 28642 and 31816 (Apr. 17, 2012), attached hereto as **Attachment E**.

stakeholders. If voluntary negotiations are unsuccessful, some complaints could be brought to the Commission, but a voluntary process could resolve or at least narrow disputes without the need for litigation.

Obviously, the need for any dispute process should be minimized by adoption of the self-effecting enforcement mechanism described above that the Massachusetts Department, and the Maryland, Ohio and Alabama Commissions have implemented.[32]

III. REDUCTION AND ELIMINATION OF THE NON-TRAFFIC SENSITIVE REVENUE REQUIREMENT

AT&T has emphasized in this proceeding that the NTSRR is an anachronistic and anti-competitive charge that should be eliminated as soon as possible for the benefit of Kentucky consumers. The *ICC/USF Order* has now set that process in motion and, consistent with the monitoring and enforcement role discussed above, the Commission should take the necessary steps to ensure that the process is completed and the NTSRR is eliminated as of July 1, 2013.

As the Commission is aware, the NTSRR provides a guaranteed revenue recovery to ILECs[33] for the "carrier common line" ("CCL") charge assessed on terminating access traffic. The current NTSRR amount is set forth in the access tariffs of these Kentucky ILECs and is recovered through the methods provided for in those tariffs from interexchange carriers ("IXCs") that terminate intrastate intraLATA and intrastate interLATA traffic to the ILECs.[34] The NTSRR is determined by multiplying the

[32] With respect to disputes that may arise in the context of interconnection agreements, the parties should be required to avail themselves of the dispute resolution provisions in those agreements.

[33] The ILECs with an NTSRR are the RLECs identified in fn. 3, *supra*, and Windstream Kentucky West, LLC.

[34] *See* Duo County Telephone Cooperative Corp., Inc., Access Tariff, Section 3.9.2. All rural LECs, except the TDS Companies, have adopted the Duo County Access Tariff. The TDS Companies and Windstream West have their own access tariffs that include NTSRR provisions similar to those in Duo County's tariffs. *See* Lewisport Telephone Company, Access Tariff, Section 3.9.2, adopted by Leslie

NTSRR per access line per monthly rate set forth in the ILECs' tariffs by the number of access lines in service on December 31st of the previous year.[35] If the number of access lines decreases during subsequent years, the monthly NTSRR does not decrease below from the prior period revenue requirement, thereby guaranteeing the ILECs a minimum revenue guarantee.[36] If the monthly NTSR charges assessed the IXCs do not cover the ILECs' "revenue requirement" as provided for in their tariffs, then the ILECs bill the IXCs for the shortfall through an NTSRR annual true-up at the end of the year.[37]

The NTSRR is solely an intrastate rate element. It has no counterpart in the LECs' interstate access rates, and indeed the CCL access charge component for those LECs that have a CCL access charge in their interstate tariffs is set at zero. Accordingly, half the revenues from the NTSRR and the CCL charges, as an intrastate terminating rate element, must be included in revenue calculations supporting the first set of rate reductions required to go into effect as of July 1, 2012. And when the second set of reductions goes into effect as of July 1, 2013, the NTSRR and CCL must be set at parity with interstate rates – in other words, they too will go to zero and be eliminated altogether.

County Telephone Company, Inc., and Salem Telephone Company; Windstream Kentucky West, Inc., Intrastate Access Services Tariff, Section 3.9.2. Windstream Kentucky East, Inc., assesses a monthly CCL charge per access line that contains a non-traffic sensitive component. *See* Kentucky Windstream East, Inc. – Lexington Access Service Tariff, P.S.C. KY. No. 8, Section 12, and Kentucky Windstream East, Inc. – London Access Service Tariff, P.S.C. KY. No. 9, Section 3. Cincinnati Bell Telephone Company has a traffic sensitive CCL charge in its Access Service Tariff, PSCK No. 2, Section 3.

[35] *Id.*

[36] *Id.*

[37] *See* Duo County Access Tariff, Section 3.9.3; Lewisport Access Tariff, Section 3.9.3, adopted by Leslie County and Salem Telephone; Windstream Kentucky West Intrastate Access Services Tariff, Section 3.9.3.

To effectuate the appropriate NTSRR/CCL reduction required by the *ICC/USF Order*, the Commission should ensure that half the NTSRR/CCL revenues are included in the ILECs' calculations for the July 1, 2012 access reductions. The NTSRR/CCL must be eliminated July 1, 2013. A complete review of the ILECs' tariffs and supporting documentation will be necessary to ensure the NTSRR/CCL is being addressed in a manner consistent with the *ICC/USF Order* and that the ILECs do not recover more than they are entitled to recover in compliance with the *ICC/USF Order*.

IV. TRANSITIONAL RECOVERY MECHANISM[38]

Consistent with the role it assigns to state commissions to develop data and monitor implementation of the intrastate access rate reductions, the *ICC/USF Order* also provides for state commissions to collect and evaluate data from carriers concerning the calculation of their "Eligible Recovery," which is the term the *ICC/USF Order* uses to describe that portion of the intrastate access reductions ILECs will be able to recover by way of the new federal mechanisms. Specifically, the *ICC/USF Order* requires the submission of certain data to the states to help states "with authority over intrastate access charges . . . to monitor implementation of the recovery mechanism and compliance with our rules, and help guard against cost-shifting or double dipping by carriers."[39] For example, price cap carriers are required to submit "data regarding all FY 2011 switched access MOU [minutes of use] and rates, broken down into categories and subcategories corresponding to the relevant categories of

[38] *ICC/USF Order* at ¶¶ 847-932.
[39] *Id. at* ¶ 880.

rates being reduced."[40] Rate of return carriers are required to provide similar (and perhaps even more detailed data) to establish their baseline for recovery.[41]

A. Access Recovery Charge. But this state-specific data collection and monitoring role, albeit important in its own right as a check on a carrier's ability to over-recover its required access reductions, is as far as the *ICC/USF Order* goes in providing a role for the state commissions relative to the federal recovery mechanisms. More to the point, the *ICC/USF Order* does not give the state commissions any direct authority over the calculation and assessment of the ARC. To the contrary, the Order makes it clear that evaluation of the ARC is within the jurisdiction of the FCC, not the states: "[T]he new ARC will be . . . separately tariffed and reported *to the Commission* to enable monitoring to ensure carriers are not assessing ARCs in excess of their Eligible Recovery."[42] This is reinforced by the provisions of the *ICC/USF Order* concerning monitoring of the recovery mechanism. Those provisions require all incumbent LECs that participate in that mechanism – including those that charge any end user an ARC -- to file annually specific data, aggregated on a holding company basis, ***with the FCC.***[43] As the *ICC/USF Order* explains, these filings will permit the FCC to monitor compliance with its requirements, including "ensur[ing] that carriers are not charging ARCs that exceed their Eligible Recovery . . . ."[44] Should AT&T choose to participate in that mechanism – including assessing an end user ARC charge – it will make the

[40] *Id.*
[41] *Id.* at ¶ 898.
[42] *Id.* at ¶ 912 (emphasis added).
[43] *Id.* at ¶¶ 921-923.
[44] *Id.*at ¶ 922. This distinction in the FCC and state commission roles is noted even in the paragraph of the Order emphasizing the state's oversight role, as a footnote to that same provision references the requirement for carriers "to file with their interstate tariffs all data, including as relevant intrastate rates and MOU, necessary to verify eligibility for ARC replacement funding." *Id.* at ¶ 813 and n. 1530.

appropriate filings on a holding company basis with the FCC as required by the *ICC/USF Order*.

Limiting the state commissions' roles vis-à-vis the ARC is consistent with the flexibility the FCC granted to carriers in developing and implementing it. The *ICC/USF Order* contemplates that, subject to certain limitations,[45] carriers will be able to exercise their own business judgment in determining whether and how to assess the ARC. Indeed, the Order makes clear that carriers have the discretion, "based on competitive constraints or other considerations," to decide not to assess the full ARC in a particular state, or even to choose not to charge an ARC at all.[46] This business judgment also extends to the ability of a carrier to determine *at the holding company level* how it wants to use the ARC to allocate Eligible Recovery among that company's affiliated ILECs.[47] The FCC saw this mechanism not only as an important means of spreading the recovery among a broader set of customers, but as enabling carriers to more fully recover their Eligible Recovery from end users with rates below the $30 Residential Rate Ceiling, thus limiting the potential impact on the CAF.[48]

In summary, this Commission clearly possesses the authority to monitor the compliance of the companies subject to its jurisdiction with the rate reduction requirements of the *ICC/USF Order*, as well as to exercise the data collection roles that

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[45] These limitations include restrictions associated with the type of customers (there are different levels of permissible initial ARC rates and annual increases for residential and single-line business customers versus multi-line business) and with whether the customer is on Lifeline service (no ARCs are permissible). *See ICC/USF Order* at ¶¶ 908-09. Any carrier that elects not to receive support from the CAF also is required to allocate its Eligible Recovery by the proportion of the carrier's mix of residential and business lines, thus limiting the ability to target ARC recovery to residential and single line business customers to the exclusion of multi-line business customers. *Id.* at ¶ 911. A carrier's ability to assess an ARC on customers in a particular state also is limited by the effect of the $30 monthly Residential Rate Ceiling adopted in the FCC Order. *Id.* at ¶ 913.

[46] *Id.* at ¶ 908 and n. 1781.

[47] *Id.* at ¶ 910.

[48] The FCC in fact noted that this could result in holding companies "allocat[ing] ARC amounts to markets where their incumbent LECs face less competitive pressure . . . ." *Id.* at ¶ 910 and n. 1791.

the Order spells out for the state with regard to those reductions and the calculation of a carrier's Eligible Recovery. At the same time, the *ICC/USF Order* makes clear that there is no role for this or any other state commission in evaluating and approving a carrier's decisions concerning the use of the federal recovery mechanisms, and in particular whether to assess an ARC and in what amount. That is instead a task that the FCC reserved to itself.

B. Connect America Fund. If the ARC does not generate sufficient revenue to reach the carrier's Eligible Recovery (generally based on the carrier's annual access and reciprocal compensation revenue reductions during the phase down; the calculations assume 10% annual volume losses for price cap carriers and 5% for rate-of-return carriers [49]), that carrier will be entitled to support from the CAF equal to the remaining Eligible Recovery.[50]

The CAF replaces existing USF support and will be capped at $4.5 billion per year. Carriers' existing USF support is frozen initially, but over time the FCC will transition the CAF to target the deployment of broadband services to unserved areas; it will use a yet-to-be-developed reverse-auction process that, in five years, will enable providers to bid on the support required to extend broadband to specific areas that would not be served without a subsidy.[51] As a general matter, landline CAF recipients must use the funds to build broadband in areas not already served by an unsubsidized competitor[52] at speeds of 4Mbps down/1 Mbps up.[53]

[49] *Id.* at ¶¶ 879-904; *see* ¶ 888 for an illustrative calculation for price cap carriers, and ¶ 899 for rate-of return carriers.
[50] *Id.* at ¶¶ 905, 917-920.
[51] *Id.* at ¶¶ 17-32, 115- 126, 127-193 (price cap carriers), 194-294 (rate-of-return carriers).
[52] *Id.* at ¶ 103.
[53] *Id.*

The Commission's role will be to help monitor whether CAF support is being used for its intended purposes. For example, eligible telecommunications carriers ("ETCs") are to report to the state commissions by April 1/October 1 of each year.[54] In addition to assisting in auditing whether CAF recipients are meeting their broadband speed obligations, the Commission will also monitor customer complaints regarding lack of voice and/or broadband service.[55]

V. CONCLUSION

The FCC has assigned state commissions an important role in ensuring that terminating access reductions are properly implemented July 1. In furtherance of that role, AT&T respectfully requests that the Commission enter an order in this proceeding requiring all carriers providing access services in Kentucky to provide the following key data by May 10:

1. Fiscal Year 2011[56] intrastate demand for each rate element included in "Transitional Intrastate Access Service" as the term is defined in 47 C.F.R. § 51.903(j).

2. All intrastate access rates in effect as of December 29, 2011.

3. All interstate access rates in effect as of December 29, 2011.

4. If the carrier's intrastate rate structure and the interstate rate structure are not the same, the carrier should provide an explanation, including all calculations and underlying assumptions, of how Fiscal Year 2011 intrastate demand for Transitional Intrastate Access Service will be mapped into its interstate rate structure to determine "revenue from Transitional Intrastate Access Service at the carrier's interstate access rates" for purposes of the FCC-mandated revenue reduction calculations. 47 C.F.R. §§ 51.907(b)(2), 51.909(b)(2), 51.911(b).

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[54] *Id.* at ¶¶ 15, 146-148, 574, 575, 581-582, 607-614, 1117.

[55] *Id.* at ¶¶ 109-110, 208.

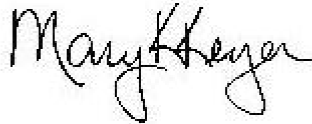
[56] Fiscal Year 2011 means October 1, 2010 through September 30, 2011. 47 C.F.R. §51.903.

5. A full description of the methodology the carrier will use to set revised rates to reflect the calculated revenue reduction.[57]

6. A full description of the rate structure the carrier will opt to utilize as of July 1, 2012, as appropriate under 47 C.F.R. §§ 51.907 (price cap carriers), 51.909 (rate-of-return carriers), and 51.911 (CLECs).

In order to fulfill its role of ensuring that the FCC's reforms as set forth in the *ICC/USF Order* are fully and properly implemented, AT&T requests that the Commission keep this case open during the transition period until all such reforms are in fact accomplished.

Respectfully submitted,



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[57] *See* 47 C.F.R. §§ 51.907(b)(2)(iv) and (v); 51.909(b)(2)(iv) and (v).