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 IN OPPOSITION TO JOINT MOTION OF TWTC, LEVEL 3, PAETEC, AND KCTA TO EXPAND PROCEDURAL SCHEDULE

BellSouth Telecommunications, LLC d/b/a AT&T Kentucky, AT&T Communications of the South Central States, LLC, BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Services, and TCG Ohio ("collectively, "AT&T"), hereby file their response in opposition to the Joint Motion of TWTC, Level 3, PAETEC, and KCTA (collectively, "Movants") to Expand Procedural Schedule. In support of its Response, AT&T states as follows:

Movants' joint motion is reminiscent of two prior efforts by TWTC, Level 3 and PAETEC (collectively, "CLECs") to delay access reform in Kentucky. In their *Joint Filing and Suggestions*[1] filed on February 18, 2011, and their *Joint Motion re FCC NPRM*[2] filed on March 17, 2011, the CLECs argued that the Public Service Commission of Kentucky ("Commission") should wait on the Federal Communications Commission

[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*").
[2] *See Joint Motion of TWTC, Level 3, and PAETEC re FCC NPRM* filed by TWTC, Level 3, and PAETEC on March 17, 2011 ("*Joint Motion re FCC NPRM*").

("FCC") due to the notice of proposed rulemaking released February 9, 2011.[3] The Commission correctly denied the Joint Motion.[4] But for setting a hearing date, we are now at the last step of the Procedural Schedule in this case – the filing of Rebuttal Testimony in a few days – and these same carriers, now joined by the KCTA, are once again asking the Commission to indefinitely delay this proceeding.

This latest effort at hindering the completion of this proceeding is similarly without merit. Movants cite two grounds for their Joint Motion to "expand" the Procedural Schedule - by which they really mean to postpone for an unspecified amount of time the date for filing rebuttal testimony in this case. First, Movants again claim that "developments in the FCC's consideration of intercarrier compensation reform necessitate that the Procedural Schedule be expanded to require parties in this proceeding to address these developments and how it affects this proceeding." (Joint Motion at 1) Second, Movants assert that they have not received all information requested from other Parties and "cannot be expected to prepare pre-filed rebuttal testimony without seeing the non-redacted direct testimony and data submitted by all parties," (Joint Motion at 2). As described below, neither rationale supports the indefinite suspension of the Procedural Schedule that Movants seek. Accordingly, for the reasons stated herein, the Commission should deny Movants' Joint Motion.

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[3] *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*").
[4] *See* Commission Order dated July 20, 2011, at 3 ("the Commission reiterates the reasons stated in its November 5, 2010 Order regarding the Commission's duty to the carriers and telephone end-users in Kentucky to undertake an adequate review of access rate compensation models and methodologies.")

I. The Commission Should not Expand the Procedural Schedule or Hold the Case in Abeyance Due to Recent Filings at the FCC.

Citing to recent proposals for intercarrier compensation reform filed with the FCC by a number of parties, including a "consensus framework" ("Framework") that was filed by several carriers to this proceeding (including AT&T, Verizon and Windstream), Movants for a third time argue that this Commission should do nothing but wait on the FCC or expand the Procedural Schedule to allow for further testimony regarding the FCC proceedings. (Joint Motion at 3) None of the activity at the FCC, and certainly not the most recent spate of filings, support delaying or halting this proceeding and do not warrant an expansion of the Procedural Schedule.

The Commission previously refused to put this case on hold to await FCC action – and time has shown that was the correct decision. After a decade of false starts and notices of proposed rulemakings, the FCC's access reform efforts have still not achieved any concrete results. In the FCC's own words, its prior efforts "stalled, leaving the current antiquated rules in place."[5]

The fact that new proposals for reform have been submitted to the FCC is not a basis to alter that decision and put this case on ice. New proposals are submitted constantly to the FCC. The "Framework" referenced by Movants is only one of several recent proposals. Any claim that the FCC is going to adopt this or any other reform plan in the near future is nothing but pure conjecture. History shows that the FCC has a pattern of releasing NPRMs and NOIs, and then failing to act for years. Although AT&T certainly hopes that the FCC finally will act to implement a comprehensive solution for

[5] *In re Connect America Fund: A National Broadband Plan For Our Future*, 2011 WL 466775, ¶ 501 (Notice of Proposed Rulemaking, rel. Feb. 9, 2011) ("*2011 NPRM*").

untying the intercarrier compensation knot, there is no basis for this Commission to halt the amount of effort, time and resources that already have gone into this proceeding to discuss these proposals. If and when one of those proposals – or indeed some other concept – is embodied in an actual FCC order, the Commission will certainly have the capability to consider its implications then. But there is no reason to engage in this process now.

Indeed, the FCC has not told the states to delay their own efforts at reform, but instead has made clear that it expects states to move forward with intrastate access reform. As the FCC correctly recognized, *intra*state access charges are the biggest problem area, and "[t]here is 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."[6] The FCC not only has encouraged states to move forward with reform, it 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 implemented enough reform to qualify for federal funds.[7] Indeed, the FCC expressly singled out "mirroring interstate rates" – the reform AT&T is proposing for Kentucky – as a possible criterion for federal support.[8]

There is also no evidence that the FCC intends to punish, or harm, states that act first. Indeed, if that were the case, AT&T would suffer the most, because, as noted

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[6] *2011 NPRM*, ¶ 554.
[7] *Id.,* ¶ 544 and n.819.
[8] *Id.,* ¶ 544.

above, AT&T has already implemented access reform and retail rate rebalancing in many of the states where AT&T is the ILEC. The more compelling evidence suggests that whatever action the FCC may ultimately take will credit states that already have engaged in access reform. With respect to the ABC Plan cited by Movants, the FCC invited comment on how the ABC Plan would "affect states in different stages of intrastate access reform – those that have undertaken significant reform and moved intrastate rates to parity with interstate rates, those in the process of reform, and states that have not yet initiated reform."[9] The FCC further sought comment on "the State Members propos[al] that the states reform intrastate rates and that the [FCC] facilitate this reform through state inducements rather than a federal framework…."[10] Thus, the FCC has made clear that it recognizes a need to coordinate its actions with the states, not harm those that are moving forward.

The intrastate switched access reform proposed by AT&T for Kentucky is directionally consistent with the intercarrier compensation (ICC) reform proposals contained in AT&T's comments in response to the FCC's NPRM, including the ABC Plan, as well as the FCC's recommendations contained in the National Broadband Plan. AT&T's proposal in Kentucky would bring intrastate access rates into alignment with interstate access rates, and provide some explicit state USF support that would better position Kentucky in the context of comprehensive federal reform if the ABC Plan is adopted. AT&T's proposal is consistent with the reforms being considered by the FCC and would benefit Kentucky consumers whether or not the Framework is adopted.

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[9] FCC August 3, 2011 Notice of Inquiry at 10-11.
[10] *Id.* at 12.

As evidenced by the FCC's August 3, 2011, *Public Notice* that sought comment on three reform proposals,[11] those proposals contain varied and even conflicting elements. For example, while the ABC Plan proposes that a uniform federal framework apply to both interstate and intrastate switched access termination charges, the State Members "propose that the states reform intrastate rates and that the [FCC] facilitate this reform through state inducements rather than a federal framework."[12] The FCC sought comments on how a joint state-federal framework might work to incent states to reform intrastate switched access rates.[13] Also under specific consideration is whether the FCC could "achieve more comprehensive reform of intercarrier compensation rate elements if recovery is achieved *through a federal-state partnership*" and "on different means by which *states could share responsibility for recovery of reduced intrastate access revenues*."[14] Thus, the FCC explicitly sought comment on issues that would maintain state jurisdiction over intrastate switched access rates and would preserve this Commission's authority to act in this proceeding. It would be premature to assume that intrastate switched access rates are going to be federalized and that the instant proceeding is no longer relevant.

Aside from these specific issues regarding the state role in reform, the *Public Notice* contains approximately 17 pages of complex questions on various facets of the reform proposals presently before the FCC. Thus, at this point in time, it is unclear what

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[11] *Public Notice*, Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding, DA 11-1348, rel. Aug. 3, 2011, at p. 1 ("*Public Notice*").
[12] *Public Notice* at 12.
[13] *Id.*
[14] *Id.* at 13-14 (emphases added).

reform the FCC will ultimately adopt as a result of its proceeding, and what the specific parameters of that reform will be.

As this Commission has previously acknowledged, there is no reason to wait on the FCC. In its March 11, 2009, *Verizon/Windstream Access Order*,[15] 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."[16] Nor should the current filings at the FCC dissuade this Commission from moving forward with this case.

In its Order establishing this case, this Commission recognized that the FCC "specifically encouraged state commissions to move forward in completing a 'rebalanc[ing] 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 old implicit subsidies to levels that are more consistent with costs.'"[17] As noted above, the FCC may issue a final order, the timing of which is uncertain, that maintains some level of state authority over intrastate access reform as suggested by the State Members.

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[15] *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*").
[16] *Id.* at 6.
[17] Commission Order dated November 5, 2010, at 5 citing *Connecting America: The National Broadband Plan*, 2010 WL 972375 (March 16, 2010) at 135.

This Commission started access reform 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. The most recent efforts at access reform began four years ago in Case No. 2007-00503, the record of which has been incorporated into this case. All procedural steps under the current Procedural Schedule have been completed except the Rebuttal Testimony that is due in less than one week. Given the time that has been invested by multiple Parties to address the issue of intrastate switched access reform in Kentucky, the fact that a Procedural Schedule has been established by this Commission, and all comments, discovery and testimony (except for Rebuttal Testimony due within days on September 19) have already been filed in the case, the Commission should continue with the current Procedural Schedule, and should set a hearing date as soon as practicable. Moving forward enables the Commission to avoid losing more valuable time, to reconcile its result with that of the FCC should the FCC issue an Order prior to the conclusion of this case, and to address any remaining issues after an FCC ruling.

II. Movants' Claim that They Have not Received All Confidential Information Does not Warrant the Indefinite Suspension of the Procedural Schedule.

The CLECs claim in their September 9, 2011, Joint Motion to Compel and for Entry of Protective Order that they have asked for and not received information from Windstream and other Parties. (*CLECs Motion to Compel* at 2) But they do not describe what information they have not received or state that the information is necessary for the preparation of their Rebuttal Testimony. Nor do Movants indicate that they took any action to obtain the information prior to filing their Joint Motion to Compel.

The CLECs merely state as an example that "Windstream has provided data and testimony designated as confidential to the Commission, but it has not provided this information to Joint Movants…." (*CLECs Motion to Compel* at 2)

This does not provide a basis for the indeterminate postponement that Movants now seek. Direct Testimony was filed by all Parties on July 8, 2011, more than two months ago. Responses to First Data Requests were filed June 10, 2011, and to Second Data Requests on September 2, 2011. If Movants were having a problem getting confidential versions of these filings -- and they deemed that information to be crucial for preparing for their Rebuttal Testimony -- they should have alerted the Commission well before now.

Notwithstanding the foregoing, if the Commission is satisfied that the CLECs have not received pertinent information they need to complete their Rebuttal Testimony and that they have taken reasonable steps before now to obtain that information, AT&T does not oppose a *limited* extension of one week, or until September 26, by which all Parties must file Rebuttal Testimony. AT&T does not agree, however, that the Procedural Schedule should be expanded. Indeed, the only procedural step that the Commission should take is to set a hearing date in the case as quickly as practicable.

Movants state in their Joint Motion that "expanding the current procedural schedule makes good sense and would allow for the parties to *ask and receive responses to any follow-up data requests necessitated by the exchange of confidential information*." (Joint Motion at 3 (emphasis added)) It appears from this statement that Movants are suggesting yet another round of data requests. If that is the case, such a request is without merit.

First Data Requests were filed on May 2, 2011, under the current Procedural Schedule, and Second Data Requests were filed on August 5, 2011, after Direct Testimony was filed on July 8, 2011. If the CLECs thought the Procedural Schedule should be expanded to include further discovery beyond what was provided for in the March 10, 2011, Procedural Schedule they should have filed their suggestion much sooner than now. Movants' suggestion of yet another round of discovery is just another delay tactic that should be rejected.

III. Conclusion

There is no reason to expand the case further or to hold the case in abeyance and incur further delay of much needed and overdue access reform for Kentucky's citizens. Other than a limited extension to September 26 for all Parties to file Rebuttal Testimony should the Commission find that appropriate, for the reasons stated herein and those in the recent Order of the North Carolina Utilities Commission denying a similar motion filed before it,[18] the Commission should deny Movants' Joint Motion, move forward with this case, and set a hearing date as soon as practicable.

Respectfully submitted,

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[18] Order Denying CompSouth and NCCTA Abeyance Motion and Extending Direct Testimony Discovery Window, *In the Matter of Petition of Sprint to Reduce Intrastate Switched Access Rate of Incumbent Local Exchange Carriers in North Carolina*, Docket No. P-100, SUB 167 (Aug. 12. 2011). A copy of the NCUC's Order is attached hereto as **Exhibit A**.

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