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

COMMENTS OF THE ELECTRIC AND WATER PLANT BOARD OF THE CITY OF FRANKFORT, KENTUCKY

Pursuant to the Kentucky Public Service Commission's ("PSC" or "Commission") Order seeking comments dated November 5, 2010 in this matter, the Electric and Water Plant Board of the City of Frankfort, Kentucky ("Frankfort Plant Board" or "FPB") files its Comments regarding AT&T's Petition and Complaint asking the Commission to reform intrastate switched access rates.

I. FPB IS A MUNICIPAL UTILITY PROVIDING HIGH QUALITY, LOW COST ELECTRIC, WATER AND TELECOMMUNICATIONS SERVICES.

A. Introduction

FPB is a municipal utility organized pursuant to KRS 96.171 et seq. and has provided electric and water service in Frankfort since 1943. FPB's board members are appointed by Frankfort's mayor and confirmed by the city commission. KRS 96.172(1). The board has "exclusive" responsibility for FPB's operations and determines rates and conditions of service. KRS 96.176(1), (2). As such, FPB is exempt from PSC regulation except as to certain rates charged to its regulated wholesale water district customers and, as in the instant case, intrastate switching rates.

B. FPB's full service network provides high speed internet access as well as local and long distance telephone service.

1. High speed internet access

FPB's full service network traces its roots to 1952 when it first provided cable television service in Frankfort. In 1995, FPB began working on solutions to upgrade its cable infrastructure. As studies were completed, it became clear that FPB could not rebuild its system unless new products and services were included in the investment. Hence, the decision was made to enter the telephone and internet business.

In 1997, FPB's Board of Directors approved a plan to upgrade the cable infrastructure to a 750 MHz hybrid fiber coaxial system. This system enables FPB to provide not only local and long distance telephone service, but also high speed internet access to many parts of Frankfort and rural Franklin County that would not otherwise have service. FPB offers a variety of data services over this system including Ethernet connections starting at 2 Mbps as well as cable modem access in speeds of 1, 2, 4 or 8 Mbps. In the future, FPB plans to offer speeds in excess of 15 Mbps.

2. CLEC operations

FPB provides local exchange service and charges for switched access pursuant to section 3.4.4 local switching of its access service tariff effective January 20, 2006. These rates are Commission approved. Pursuant to KRS 278.430 AT&T must show "by clear and satisfactory evidence" that the rates are unlawful. AT&T's Complaint notes only that some CLEC's charge higher rates as compared to AT&T and that its "wireline long-distance business" has decreased. AT&T Compl. 6, 10. This, however, does not demonstrate that intrastate switched access rates, or FPB's switched access rates, are unreasonable. Likewise, it does not demonstrate that there exists any competitive crisis in switched access, the long distance market or the telecommunications market that merits Commission intervention.

II. FPB'S SUGGESTED APPROACH FOR INTRASTATE ACCESS REFORM

The Commission's November 5, 2010 Order posed several questions in this matter including:

- Whether Kentucky should employ a cost-based system for access rates;
- Whether CLEC's should mirror the ILEC's intrastate rates; and
- Whether access charges should ultimately move to a zero rate.

Admin. Case No. 2010-00398, An Investigation into the Intrastate Switched Access Rates of all Kentucky Incumbent and Competitive Local Exchange Carriers (Ky. PSC Nov. 5, 2010) Order at 6.

Given the wide variety of alternatives to traditional "landline" long distance service, FPB suggests that the Commission take no action to reform intrastate rates and instead permit the market to select the proper rate. FPB maintains that CLEC mirroring of the ILEC intrastate rate is not a proper basis to determine the CLEC intrastate rate. Likewise, a zero rate is not appropriate since there are always some costs associated with switching a call. Finally, should the Commission mandate intrastate access reductions in this matter it should consider creating a mechanism whereby these savings "flow through" to Kentucky consumers.

A. The Commission should take no action to reform intrastate access rates and instead permit the market to determine the proper rate.

As Windstream noted in its Motion to Dismiss, when the Minnesota Department of Commerce considered intrastate access reform (Ex. A) it recommended that the market determine the appropriate rate. Case No. 2007-00503, Windstream Motion to Dismiss, Answer, and Response to Motion for Full Intervention (Ky. PSC Jan. 17, 2008) at 15. AT&T has failed to demonstrate that there is any competitive crisis in the long distance or telecommunications market that merits Commission action. Consumers have many choices including "landline" telephone service, wireless service (smart phones, cell phones), email, text messages, instant messages, VoIP, Skype and social media. Wireless substitution is now estimated at 24.5%. Stephen J. Blumberg, Ph.D., and Julian V. Luke, Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2009, Division of Health Interview Statistics, National Center for Health Statistics, May 12, 2010, http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.pdf. The fact that AT&T's wireline business may have decreased cannot simply be attributed to intrastate rates. Instead, wireline business has decreased because of competition with newer technology. Consumers are much less willing to maintain a "landline" when a smart phone provides access to voice, video and data anytime and anyplace.

AT&T also maintains that intrastate rates stifle broadband deployment, but offers no examples. AT&T Compl. 6. In its North Carolina comments it noted that "[s]o long as they [LECs] derive a substantial portion of their revenues from intrastate switched access charges . . . they [LECs] will be discouraged from fully investing in broadband and VoIP arrangements." Docket No. P-100, Sub 167, Comments of AT&T in Support of Sprint's Petition to Reduce Switched Access Rates (N.C. PSC Feb. 12, 2010) at 8. This is not the case. FPB is a CLEC and has a substantial investment in its broadband network in Frankfort. It has made this investment because there is a market for high speed internet access and the various services that can be delivered with it.

AT&T essentially agrees that permitting the market to determine the rate is appropriate. In its North Carolina comments it noted "high access charges cannot be sustained in any event" because consumers are deserting wireline service. Id. at 8. Consumers are doing this because there are already alternatives to a traditional landline and these alternatives already exist in the current intrastate market. AT&T notes by reforming intrastate rates "consumers can enjoy a more full array of competing services . . . and innovation from the local exchange carriers." Id. at 9. However, consumers have an array of services and there is no need for Commission intervention into this particular market.

B. CLEC mirroring of ILEC intrastate rates

The arbitrary imposition of an ILEC's rate structure is not an appropriate basis to reduce intrastate rates. In its North Carolina comments AT&T suggested that CLECs match ILEC intrastate rates. It wrote:

> The ILECs' interstate switched access rates are more than sufficient to recover relevant costs, as no ILEC has asked the FCC or the courts to review those rates. As such, reducing LECs' intrastate switched access rates to the levels and structures of the corresponding interstate rates, and capping competitive local exchange carriers' access rates at the level of the ILEC with which they compete, will still allow LECs to recover any legitimate measure of their intrastate switched access costs.

Id. at 10. While mirroring an ILEC's intrastate rate may permit a LEC to recover its costs, it does not follow that this approach is valid for every CLEC or RLEC. The fact that an ILEC may recover its costs does not mean that its rate structure is suitable for other CLECs or RLECs. If the Commission adopts a mirroring methodology, then the ILEC's intrastate rate should be considered a minimum rate and the CLEC/RLEC should be permitted to produce cost based data to increase its intrastate rate if necessary.

Zero rates are not appropriate. The North Carolina Rural Local Exchange Company Coalition wrote in its comments that "[r]egardless of whether users stay connected through landlines, cell phones or calls completed over the Internet, virtually all calls travel through the traditional public switched telephone network at some point . . . Building and maintaining the local network . . . is capital intensive." Docket No. P-100, Sub 167, Comments of the North

Carolina Rural Local Exchange Company Coalition (N.C. PSC Feb. 12, 2010) at 7. There will always be a cost associated with call switching and a zero rate denies a company the opportunity to recover those costs.

III. THE COMMISSION SHOULD REQUIRE THAT ANY SAVINGS RESULTING FROM INTRASTATE RATE REDUCTIONS FLOW THROUGH TO KENTUCKY CONSUMERS.

If the Commission proceeds with reform, then it should consider including mechanisms to ensure that any reductions benefit Kentucky consumers. Other states and commentators that have considered intrastate reform have suggested any savings resulting from intrastate reductions flow through to the consumer. When the Minnesota Department of Commerce considered access reform in 2004, it noted that "the welfare of Minnesota's local ratepayers requires concrete and binding assurances that any and all access reductions be returned to Minnesotans. Further, this 'flow-back' assurance must be given before determining what access charge reductions can and should be mandated." Ex. A at 2; Case No. 2007-00503, Windstream Motion to Dismiss, Answer, and Response to Motion for Full Intervention (Ky. PSC Jan. 17, 2008) at 15. If no flow-through requirement is mandated, then there is no assurance that Kentucky consumers will benefit from reduced telephone rates or increased access to broadband networks built with the savings. See Docket No. P-100, Sub 167, Comments of the North Carolina Rural Local Exchange Company Coalition (N.C. PSC Feb. 12, 2010) at 12-13.

IV. CONCLUSION

AT&T has not demonstrated that intrastate rates are unreasonable or that there is a lack of competition in the telecommunications marketplace. Wireline business has not decreased because of intrastate rates. It has decreased because of newer technologies that will continue to make the wireline business challenging.

The Commission should permit the market to select the appropriate rate and ultimately the appropriate technology whether it is wireline, cell phone or other Internet based form of communication. FPB has a substantial investment in its broadband network and is prepared to offer new communications technologies notwithstanding that it also charges for intrastate switching. Broadband deployment has not suffered.

However, if intrastate reductions are mandated, then the Commission should make certain that those reductions flow through and benefit Kentucky consumers in the form of rate reductions or enhanced broadband offerings. Finally, ILEC intrastate switched rates should be considered a floor and CLECs/RLECs should be permitted to recover their switching costs if necessary.

Respectfully submitted this 17th day of December, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that the electronic version of this filing made with the Commission on December 17, 2010, is a true and accurate copy of the document filed herewith in paper medium; that the electronic version of the filing has been transmitted to the Commission; that an original and one copy of the filing will be delivered to the Commission on December 17, 2010; and that, on December 17, 2010 electronic notification of the electronic filing was provided to the Commission and the parties of record for whom an e-mail addresses is provided in the on-line service list for this proceeding.

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EX. A

MINNESOTA
DEPARTMENT OF
COMMERCE

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October 20, 2004

Burl W. Haar
Executive Secretary
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Re: Access Reform Proceedings, Docket Nos. P-999/CI-98-674 and
P-999/CI-04-852

Dear Dr. Haar:

Six years ago the Commission opened the access reform docket (P-999/CI-98-674). The ultimate goal of this docket is to mandate that Minnesota's incumbent local exchange carriers (ILECs) reduce any above cost charges they impose on interexchange carriers (IXCs) for originating and terminating calls. At the time, and throughout much of the proceedings, the Department supported this approach. However, for the reasons outlined below and discussed in the attached paper, the Department believes that this is no longer the best approach and is, perhaps most importantly, contrary to the interests of Minnesota's local service ratepayers.

The Department reaches this conclusion for these reasons:

- Reductions in access charges will result in higher local telephone rates.
- There are no assurances that Minnesotans will derive any corresponding benefit from lower long distance rates from access reductions.
- It is not acceptable or realistic to expect that a universal service fund can or should be created to address the adverse local rate consequences of access reductions.
- IXCs, the primary beneficiaries of any reductions in access charges, have already taken a number of unilateral steps to address the issue.
- New technologies, providers and offerings allow consumers to bypass access charges, extinguishing the consumer or marketplace need for the Commission to aggressively mandate access reductions.
- By reinforcing market and consumer-based forces, the Commission can achieve its desired results with limited adverse consequences while ensuring that the benefits accrue directly to Minnesotans.

Accordingly, the Department urges the Commission to update its approach to access reductions. This can best be done by first closing the current access reduction dockets (P-999/CI-98-674 and P-999/CI-04-852). The Commission can then adopt a market-based approach to address this issue. One market-based idea is to allow IXCs to limit the areas that they wish to serve in Minnesota, rather than forcing them to serve the entire state. Another idea is for terminating and originating access charges to be equal.

If the Commission does not agree that this approach is superior and continues on the path it set out six years ago, the Department believes that the welfare of Minnesota's local ratepayers requires concrete and binding assurances that any and all access reductions be returned to Minnesotans. Further, this "flow-back" assurance must be given before determining what access charge reductions can and should be mandated. While the "flow-back" issue is among the issues pending before the presiding ALJ, it needs to be decided in advance of any decision to mandate access reductions. Accordingly, the Department urges the Commission to suspend the proceedings until an appropriate "flow-back" mechanism has been established.

Given the importance and impact of pursuing access reductions and the impending litigation deadlines in the current dockets, the Department would appreciate this matter being put on the Commission's agenda as quickly as possible. We look forward to the Commission's prompt and thoughtful action on this matter.

Sincerely,

Edward Garvey
Deputy Commissioner, Energy and Telecommunications

c: LeRoy Koppendrayer, Chair
Kenneth Nickolai, Commissioner
Phyllis Reha, Commissioner
R. Marshall Johnson, Commissioner
Thomas W. Pugh, Commissioner

Reasons to Re-visit the Current Approach for Access Reductions

More than six years have elapsed since the Commission issued its June 4, 1998 Notice Soliciting Comments on Access Charge Reform. Much has happened since then and the Department is no longer confident that the benefits achievable through mandated access charge reductions are greater than the cost of doing so. As a result, the Department believes the Commission should step back and ask itself whether the access reduction path it started down, with the rate increases that inevitably lie at the path's end, is still the correct path. Or, whether, given the intervening changes in the telecommunications marketplace, there might be a more appropriate path to achieve the same goal.

It is clear to the Department, after years of examination and analysis, and months of negotiations with parties, that if local exchange carrier (LEC) access charges are reduced, local rates will increase. But, it is uncertain whether there would be any corresponding reduction in long distance rates. While we may anticipate the likely local rate impact of access reform, there is no information from the interexchange carriers (IXCs) to demonstrate the impact on toll rates. Supposedly, the solution to the potential for higher basic local rates is for the state to create a "universal service fund" to mitigate the retail rate impacts of the access reductions. But this is a solution that the Department views as worse than the cure. Increasing everyone's telephone rates through a tax is not a viable solution in the current regulatory scheme where the Commission no longer regulates the earnings of telephone companies. Further, to the extent there are costs to create and administer such a program, consumers will be paying more in the aggregate for a program that is supposed to keep their telephone rates low.

If the Commission proceeds with access reform and decides to achieve one-size-fits-all target access rates, the impact on the LECs and their ratepayers will vary widely. The LECs come from many different starting points in terms of the level of their existing local rates. There are also differences between LEC residential rates, business rates, extended area service (EAS) rate additives and the manner in which those additives were developed, access rates and the percent of overall revenues received from access versus local rates.

Market events and individual consumer activities in the form of expanded wireless coverage, the decrease in EAS petitions, statutory incentives to create expanded local calling areas, IXC "self-help," as well as the rise of Voice over Internet Protocol (VoIP) technologies, have all muted the marketplace's call for access reduction.

For these reasons, the Department no longer believes pursuing government mandated LEC access reductions is necessary or desirable.

The Current Access Reduction Path May Not Be the Correct One.

The access reform path the Commission is currently pursuing is to achieve access charge reductions by government mandate. This is the traditional manner in which government accomplished policy objectives in a monopolistic environment. This was the environment six years ago, but not today. As a result, the first question the Commission may want to ask itself is whether setting rates through government mandates is appropriate in today's increasingly competitive telecommunications market. The Commission does not mandate rates for local service, custom calling features, directory assistance, or many other services offered by local providers. Why is it necessary for the Commission to mandate rates for access when it declines to do so for these other services?

Even if the Commission decides that the market, on its own, cannot adequately address this issue, a second question the Commission may wish to ask itself is whether the path it chose in 1998 is still the proper path or whether there might be a more appropriate direction for Commission action. Will any Commission mandated access reform taken under the direction of the 1998 path be sustainable in the market or will it be only another Band-Aid approach, ensuring that access reform will need to be addressed again and again in the future, while creating its own market anomalies? For example, unless the Commission eliminates the carrier common line charge (CCLC), if permissible to do so under law, there will be parties continuing to argue that elimination of the charge is necessary. (Of course, the more the CCLC is reduced, the greater the impact on local rates.) To reduce local switching and local transport access charges to cost will also result in local rate increases. Further, the costs of local switching and local transport are also likely to change over time. If the Commission issues a mandate that access charges must equal cost, proceedings will be necessary to determine if there should be increases or decreases in the rates. Parties will continue to argue over the appropriate rates, assuring the Commission's journey down this path far into the foreseeable future.

The path is even more difficult than it appears because there is not a simple, across-the-board fix. The LECs, because of their different local rates, local rate design, EAS rate additives, level of access rates, and reliance on access revenues versus local revenues, will all experience different rate and revenue pressures.

A better solution to mandating access reductions is to establish appropriate market incentives that allow companies to compete on fair and equal terms. Isn't it better to create a regulatory environment where it is not necessary for the government to determine what the rates for each company should be because market forces serve this role? Such a framework is more sustainable than a Band-Aid approach that will lead to perpetual regulatory proceedings before the Commission.

MARKET CHANGES HAVE OVERTAKEN THE NEED FOR ACCESS REDUCTIONS

- The decline in EAS petitions is indicative of satisfaction with current options for making toll calls

When the access reform docket was opened, the Commission was at a peak in receiving petitions for EAS. Extended area service is a service that, if approved by a majority of those voting in the exchange(s), replaces toll calling with a flat monthly fee for unlimited calling over the EAS route. Large numbers of EAS petitions could be viewed as dissatisfaction with the toll rates. In 1993, the Commission received 28 EAS petitions. In 1996 there were 33 petitions for EAS and in 1997 there were 30 petitions for EAS. (In 1994-95, the legislature had implemented a moratorium on the EAS process while the Commission worked out a new procedure for EAS.) However, since that time, the number of EAS petitions has dropped significantly to twelve in 1998, five in 1999, nine in 2000, three in 2001, six in 2002, one in 2003 and two in 2004. Obviously, fewer people across the state are dissatisfied with the cost of making a toll call to a nearby exchange or have found an alternative.

- <u>Wireless and other technologies are replacing the traditional way consumers make long distance telephone calls</u>

Wireless pricing plans are a second reason why access reductions may be unneeded or too late. In 1994, the national penetration rate for cellular service was ten percent. In 1998 it was nearly 26 percent. Today the penetration rate for cellular service nationally is 54 percent. Furthermore, 97 percent of the total U.S. population lives in counties with access to three or more different providers offering mobile telephone service. Customers that make a significant number of intrastate telephone calls clearly can choose to make those calls over a wireless telephone and avoid any toll charges. Cellular service is also not the only alternative available to subscribers. Customers can choose to communicate using bundled local/toll plans, via email, via voice between two computers with service such as Skype, or for those with high speed internet service, via VoIP.

- <u>Law change allows local telephone companies to offer expanded local calling</u>

A recent legislative change also gives companies greater ability to meet customer demands for less toll and more local calling: the expanded local calling area provisions under Minn. Stat. 237.414. A telephone company that wants to offer an enlarged local calling area is free to negotiate the rates for terminating calls with companies serving the expanded calling area. The law is too new to have seen any filings yet, but the small LECs vigorously supported it so one could reasonably anticipate implementation of expanded calling areas. For example, the Minnesota Independent Coalition stated, "A number of MIC members are considering the possibility of providing calling plans that offer: 1) various blocks of minutes of usage; and 2) local calling areas of varying sizes within the state. The number of minutes of use and the scope of the calling scope are each on a continuum, the maximum scope of which would involve: 1) unlimited usage; and 2) statewide calling scope."[1]

- <u>IXCs (the primary beneficiaries of any access reduction) have already addressed the access charge matter themselves, negating the need for the Commission to do so</u>

The Commission has recognized and approved a mechanism whereby toll providers can and do explicitly recover the costs of access charges they pay to local telephone companies for carrying in-state long distance calls. In approving the proposals of several

[1] See MIC comments in docket P-999/CI-04-842, (In the Matter of a Commission Report to the Legislature Regarding Statewide Calling Plans).

toll companies to charge a monthly fee to certain customers for explicit recovery of intrastate access charges, the Commission stated,

> The Commission will accept the proposals by the Companies herein to charge a monthly fee to certain customers for explicit recovery of intrastate access charges.
>
> The Commission finds that not charging the intrastate access fee to customers who take both local and long distance service from the same company is not unduly discriminatory. Providers are increasingly offering bundled long distance and local services that provide for a lower total price than the sum of the individual parts. Waiving the intrastate access fee to long distance customers who also take local service is a variation on this bundling concept and is not unreasonably discriminatory.
>
> Similarly, the Commission finds that it is not unreasonable for the Companies herein to charge a monthly intrastate access charge to residential customers in certain circumstances and to exempt business customers from this charge. These two groups are not necessarily similarly situated, in regards to access fees. The business customers utilize more minutes than residential customers and because of the higher volume are not limited to service only through switched access lines. Residential customers, on the other hand, tend to buy fewer services, generate lower volume and present fewer alternatives to developing a separate rate design.
>
> Further, the proposed charge applies only to a competitive service, and given the competitive environment for long distance service, there is clearly the opportunity for the consumer to find another long distance carrier if the consumer so desired.[2]

Further, in Docket P-442 et.al./C-04-235, the Department makes clear that certain IXCs have made inappropriate arrangements with certain providers to get lower access charges.

In short, the elapsed time and the competitive marketplace have made, and continue to make, corrections for the mismatch of access costs and access rates.

<u>A STATE USF IS NOT THE ANSWER</u>

In all of the years that the issue of access reform has been on the table, it has been conventional thinking that Commission mandated access rate reductions would result in increases in basic local telephone rates. In fact, if this were not so, the Commission would not have struggled with this issue through an open proceeding for over six years. In looking at the individual LEC data, the Department believes that conventional thinking was and remains correct: access reform will result in higher local rates for the majority of the companies.

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[2] See pp. 6-7 of Commission's November 5, 2003 ORDER ALLOWING INTRASTATE RECOVERY CHARGES in Docket Nos. P-442/EM-02-539, et. al.

The Department would note that some believe that the way to address the local rate increases is to establish a state universal service fund (USF). The Department disagrees. A USF is not acceptable or realistic.

A state USF, funded by a tax on all ratepayers in the state, is just another substitute for the existing cross-subsidizations. Furthermore, establishment of a state USF would not be simple or cheap. Many difficult choices would need to be made regarding what services are funded, who receives funding, how the fund is administered, and whether the fund payments are being spent as intended. The USF administrative and audit functions would have to be funded. The current debate over the federal USF programs is an example of the controversy that can surround a public fund. Finally, a state USF must be implemented through a Commission rulemaking which will follow its own path separate from any access reform and over which the Commission does not have final control. The uncertainty surrounding the possibility of a state USF cannot be used as the guarantee to mitigate the local rate impacts of Commission-ordered access reform.

SAFEGUARDS MUST BE ESTABLISHED BEFORE ANY GOVERNMENT MANDATED ACCESS REDUCTIONS

If the Commission believes that government mandates can better correct the market than competition and wishes to continue down its current access reform path, then certain safeguards are required to ensure that access reform is in the public interest.

First, as part of any mandate that the LECs reduce their access rates, IXCs must also be mandated to return back to Minnesotans 100 percent of those access reductions in the form of lower toll rates or fees. Without such a requirement, every ratepayer in the state could be forced to pay higher monthly local rates with little or no reduction in the price of toll service. Without such a "flow-back" requirement, Minnesota ratepayers would be better off with no access reductions and seeking out competitive alternatives to toll service, or paying slightly higher toll rates for the toll calls that they do make, rather than paying a higher monthly local rate.

Second, the Commission must monitor how fast and how far it requires access rates to be reduced. Most of the independent LECs in the state are regulated under alternative forms of regulation or AFORs. They, therefore, have the ability to raise their local rates to offset any Commission-ordered access reductions with no oversight by the Commission as to how high those rates can go unless there are a significant number of ratepayers who can quickly respond with a complaint. In a perfectly competitive market, price would equal cost. However, we don't have a perfect market. The price of most services (local; custom calling features such as caller ID, voicemail, call waiting; directory assistance) is not directly related to the cost of the service. Mandating the movement of price to cost for only access service requires careful consideration of the impact on rates for other services.

CONCLUSION

The Commission should close its access reform dockets, P-999/CI-98-674 and P-999/CI-04-852, and instead rely on the competitive market to handle the cost/price disparity that exists for access charges.

Should the Commission determine that a better path may be to focus on market incentives and a government framework, then the Commission may wish to initiate a proceeding that builds on the incentives that already exist in the marketplace to achieve the desired results. Under this alternative, the Commission should close the dockets dealing with access charge reform and engage itself in a proceeding that builds on the incentives that already exist in the marketplace to achieve the desired results. One such incentive or parameter that could be applied under a regulatory framework would be that terminating access fees may be no higher than originating access fees. The Commission could also permit companies to exit a market or reduce their service offerings in those areas where a LEC exceeds some level of access charges. There are many possible parameters that the Commission may use to craft the right set of incentives to make the market function appropriately without the government mandating rate levels.

If the Commission determines that the path it chose in 1998 is still the correct path, then the Department believes that the Commission must also, along with mandating appropriate access rates, 1) obtain concrete commitments from toll carriers that they will reduce their long distance rates in an equal amount and 2) closely monitor the impact of access reductions on local rates. If the Commission mandates access reductions without also issuing mandates on the impacts of access reform, there is no guarantee that the Commission action is in the public interest. Clarification by the Commission that mandated access rates will be accompanied by a mandated flow back from the benefiting IXCs and close monitoring of local rates would greatly assist the parties in forming their positions on exactly how access reform should occur by government mandate.