COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

COMMENTS OF TDS TELECOM
(LESLIE COUNTY TELEPHONE COMPANY,
LEWISPORT TELEPHONE COMPANY, AND
SALEM TELEPHONE COMPANY)

TDS Telecommunications Corp., on behalf of Leslie County Telephone Company, Lewisport Telephone Company, and Salem Telephone Company (collectively "TDS Telecom" or "TDS Companies"), submits these comments on and/or alternate proposals to the AT&T Plan for Kentucky Switched Access Reform ("AT&T Plan") pursuant to the Order of the Kentucky Public Service Commission ("Commission") entered March 10, 2011 ("Order").

I. Introduction

The TDS Companies are all "rural telephone companies" as defined under the Telecommunications Act of 1996 ("TCA-96") and are jointly owned by a common parent. The three TDS Companies filing these Comments serve some of the most rural and agrarian communities of Kentucky. Further complicating TDS' rural service is the discontiguous nature of the TDS Kentucky service territories, with all three companies set apart from each other across the Commonwealth in eastern, western, and northern Kentucky.

In their comments submitted at the above docket on December 20, 2010, the TDS Companies noted that not only do they continue to invest in and support economic development in rural Kentucky, they do so while maintaining traditional voice service and modernizing and expanding their broadband network to provide rural Kentuckians modern broadband services.

Their role as the service provider in rural Kentucky cannot be overlooked. As rural providers, the TDS Companies lack the size and scope in customer base that allows them internally to "average down" their costs per customer. No rural ILECs have the same scope or scale or economies enjoyed by the former RBOCs, including the newly reconstituted AT&T, that are now even larger following multiple mergers and acquisitions taking them well beyond their post-divestiture RBOC size.

The lesser the population density within the service territory, the longer and fewer the average loops required to serve the customer base, facts which result in higher capital and maintenance costs. The greater the population density, the lesser the investment and cost per subscriber. Moreover, rural service territories lack the other characteristics (dense populations, low cost service areas, large business customer bases) that more readily provide large non-rural carriers the ability to sustain and internally support affordable local rates. Nonetheless, despite the overwhelmingly rural nature of their service territories and lower business-residential customer ratio, the TDS Companies have continued to serve *all* rural customers, modernize their networks and provide outstanding service. They provide modern services as the carriers of last resort in their rural territories, where competitors have the ability to choose to serve, or not, based upon the profitability, rather than a statutory obligation to serve.

While overlooking the critical role rural carriers play in Kentucky in its comments, AT&T also avers that the current support systems are "actually harming Kentucky consumers"[1] by hindering the ability of long distance carriers to compete, by impeding the development of competition generally by favoring other technologies over wireline IXC services, and by forcing other Kentucky consumers to subsidize rural customers.[2] These claims are false.

Higher intrastate access rates do not impede toll competition. Nor have state access rates disincented rural ILECs from innovating their services or retarded the rate of technological innovation in Kentucky.[3] Rural ILECs, including the TDS Companies, all maintain modern networks, which they are constantly improving. The *loss* of access revenues would arrest that innovation, not spur it.

AT&T claims that reductions in access rates will improve the "competitiveness" of the long distance market.[4] The toll market is declining for a variety of reasons, none of which relate to access charge levels. The IXCs, including specifically AT&T, have been in the process of abandoning the IXC market due to factors much more powerful than access charges, primarily changing technology and customer preferences.

In a Declaration[5] filed before the FCC to support its *SBC/AT&T Merger Application*, AT&T explained its June 2004 decision to abandon the local and long distance mass market, setting forth a litany of reasons why its long distance business plan was failing: the existence of "powerful competitors," wireless package plans, the "RBOCs [win of] authority to offer interLATA services throughout the country[,] competing aggressively and winning market share

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[1] AT&T Comments at 1.
[2] AT&T Comments at 2-3.
[3] AT&T Comments at 6 (citing a speech by FCC Chairman Genachowski referencing carriers resisting conversion to all-IP networks).
[4] AT&T Comments at 6.
[5] *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65 ("*SBC/AT&T Merger Application*"), Declaration of John Polumbo, President and CEO of AT&T Consumer Services; Available at http://fjallfoss.fcc.gov/ecfs/document/view?id=6517309101.

very quickly[,] E-mail and instant messaging," for example, all contributed to the decline and abandonment of AT&T's long distance business plan.[6] Access rates are no where listed as a cause for the abandonment of the long distance market.

AT&T decided that it would no longer serve stand-alone toll customers, but instead would market bundles that matched what its unregulated or lightly regulated competitors were doing.[7] AT&T intended that stand alone toll customers "dwindle[] away over time through churn."[8] AT&T, in fact, during this time of decreasing interstate access rates raised its customers toll rates for its all-distance bundles by anywhere from $2 to $5, and increased the monthly recurring charge on many plans typically by either $1 or $2, as well as increased a number of basic rates for international service.[9] Indeed, after the first round of a multi-stage access reduction in Virginia, AT&T raised toll rates by an astounding 20%. Thus, assertions of hindering competition and alleged lost customer benefits are illusory.

Outside state access restructuring forums such as this one, AT&T does not blame high intrastate access charges for its wireline toll losses and the change in its business plan to broadband and wireless. As AT&T has elsewhere repeatedly emphasized, it is intermodal competition that affects its business.[10] Thus, AT&T decided, some time ago, to grow its revenues in precisely that direction -- wireless and broadband. AT&T has decided to grow its revenues in its other businesses, and put little to no more investment into the wireline segment,

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[6] *Id.* at ¶ 4.
[7] *Id.* at ¶ 6.
[8] *Id.* at ¶ 9.
[9] *Id.* at ¶¶ 2 and 33-34.
[10] *In the Matter of International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act, A National Broadband Plan for Our Future, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket Nos. 09-47, 09-51, and 09-137, Comments of AT&T Inc. on the Transition from the Legacy Circuit-Switched Network to Broadband, filed December 21, 2009 ("*AT&T FCC Network Comments*").

because of a shift in technology, not because of the level of rural intrastate access charges.[11] As AT&T stated: "Due to technological advances, changes in consumer preference, and market forces, the question is *when*, not *if*, POTS service and the PSTN over which it is provided will become obsolete."[12]

The TDS Companies are sympathetic to the fact that the IXCs' toll business has declined, since the cause is directly proportional to the TDS Companies' own loss of market share to intermodal competition. The cause of this decline, however, is not Kentucky's intrastate access rates.[13] It is a direct result of the increased number of competitors[14] and the attractiveness of their products, particularly to young adults. The growth in email and texting, as well as social web sites, has truly become a cultural phenomenon and relates mostly to convenience and ease of use. It also marks a fundamental transformation in the way we communicate.

These powerful changes in technology and customer preference are the reasons that the big IXCs, including AT&T, decided to exit the toll market several years ago, not access rates. The IXCs' business models have simply changed with technology and customer preferences. In published articles and sworn testimony to the FCC, AT&T has affirmed this.[15] It is misleading for AT&T to now suggest otherwise to this Commission.

The reduction in access revenues, therefore, will have little or no effect on the promotion of wireline toll competition, particularly in rural service territories. Complaints about the rural ILEC access rates on grounds of competitive harm are simply a façade to rationalize the

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[11] *AT&T FCC Network Comments* at 40 (emphasis added).
[12] *AT&T FCC Network Comments* at 40 (emphasis added).
[13] AT&T claims that intrastate access charges "severely hinder the ability of long distance carriers to compete against e-mail, social networking websites, Voice over Internet Protocol ("VoIP") services offered by cable providers and others, and wireless carriers, none of which is burdened with the same access subsidies long distance carriers are forced to bear." AT&T Comments at 2.
[14] It is worth noting that these competitors do not allow IXC access to their customers. Neither cable nor wireless carriers offer customers the right to use an alternative toll provider. There is no option to choose a "Preferred Interexchange Carrier" ("PIC") as there is with the ILECs.
[15] AT&T Polumbo Declaration at ¶¶ 1 and 9.

proposed transfer of millions of dollars from rural local service providers and their customers to the largest long distance and wireless carriers in the country, while at the same time enhancing the competitive positioning of their wireless and cable operations by increasing the rural ILECs' end user rates.

Wireless service is growing because of mobility, convenience and the high tech functionalities of the phones. The iPhone is a phenomenon by any measure. Wireless phones no longer offer *just* voice service, or voice and camera services. They have "apps." Web browsing and data transmission over wireless phones are exponentially expanding wireless' viable options. Consumers, particularly the younger generations, are increasingly willing to use wireless exclusively for their communications needs.

VoIP phones are also gaining widespread favor. Reliability and privacy are less valued features. The overall maturation of technology and usability of IP technology has driven the growth of competitors' lines at the expense of traditional fixed lines. Again, intrastate access rates have nothing to do with the growth of this product. Many of the carriers delivering VoIP-based calls use the TDS Companies' exchange access services, but simply refuse to pay access charges and, therefore, magicJack can advertise unlimited calling for $19.95 per year.

AT&T's claims that current intrastate access charges impede competition by favoring these other technologies completely misses the mark. It is not intrastate access policy that favors technology, but rather the fact that that the FCC has approved a different compensation scheme for wireless carriers (i.e., the MTA as a local call for wireless carriers). This, however, is a federal policy decision. The designer of the rule, the FCC, inconsistently applies its access rates to the wireline carriers on the basis of tariffed local calling areas, and to wireless on the basis of the much larger MTA. Forcing local rate increases on rural Kentucky ratepayers is not

necessarily the most advisable way for this Commission to level the advantages currently enjoyed by wireless and VoIP providers.

Finally, AT&T's complaints that Kentucky's long distance customers should not be forced to contribute to support "a small minority of subscribers in selected parts of the Commonwealth [who] pay artificially low local telephone rates"[16] similarly attempt to redress AT&T's complaints about federal policy through Kentucky's rural local ratepayers, while relegating Kentucky's universal service policies to second class. Again, this Commission must consider whether local rate increases and temporal USF support are the best way to merge the interests of federal policy with those of the Commonwealth of Kentucky.

Nevertheless, *if* it is the intention of this Commission to restructure the implicit support currently provided through intrastate access charges, then in order to continue to assure access to revenue streams that will provide the financial return necessary to continue to successfully meet the challenges of serving rural Kentucky, including the carrier of last resort obligation, the TDS Companies maintain, as proposed in their original comments, that the Commission must entertain an approach to intrastate access restructuring that is uncomplicated and practical. With the alterations suggested below, the TDS Companies believe that the AT&T Plan could provide a workable template for intrastate access charge restructuring.

II. The AT&T Plan and TDS Companies' Comments

A. Revenue Neutral Intrastate Access Restructuring Through a Combination of Local Rate Increases to a Reasonable Benchmark and Explicit Universal Service Funding

[16] AT&T Comments at 3.

The AT&T Plan proposes that the Commission determine a "reasonable Benchmark"[17] up to which ILECs whose basic service rates remain subject to Commission review (including the TDS Companies) will be rebalanced on a revenue neutral basis. ILECs, therefore, will recover access revenue reductions through a combination of higher basic local rates and payments from a Kentucky Universal Service Fund ("KUSF"). Where the ILEC declines to implement a local rate increase, the increase will be imputed for purposes of calculating USF draws.[18] Neither cost studies[19] nor an earnings test[20] would be required. Immediate reductions would commence within 180 days of a final Commission Order,[21] with annual steps over a 5-year period limited to no more than a $2.00 increase per line per month and the remainder of the lost access revenues being recovered from a KUSF.[22] Distributions from the KUSF would be reassessed every year to account for further annual local rate increases and existing access line counts.[23] Contributors to the Plan would include "[a]ll providers having Kentucky retail intrastate telecommunications revenues" including specifically wireline ILECs, CLECs, wireless carriers and IXCs, and the KUSF contribution assessment would mirror the current federal USF contribution methodology (revenue based).[24] After 5 years, all aspects of the Plan, including the benchmark and the KUSF, would be revisited.[25]

The TDS Companies recognize this Commission's inquiry into restructuring intrastate access charges and agree generally with the approach as described by AT&T, namely gradual reduction of intrastate access charges through a revenue neutral process that combines moderate

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[17] AT&T Comments at 9.
[18] AT&T Comments at 9.
[19] AT&T Comments at 7.
[20] AT&T Plan at ¶ 5.
[21] AT&T Plan at ¶ 2.
[22] AT&T Plan at ¶ 3.
[23] AT&T Plan at ¶ 4.
[24] AT&T Plan at ¶ 6.
[25] AT&T Plan at ¶ 7.

local rate increases with continued support through an explicit USF fund. Traditionally, the TDS Companies have been able to maintain local rates at an affordable level, and a level that remains comparable with urban rates as required by TCA-96,[26] through the contribution to network costs associated with intrastate access charges. The transformation in the telecommunications environment from a pure regulatory approach to a mixed regulatory and market environment, however, has stressed the ability of carriers receiving payments for access to their local networks to continue to ensure reasonable, affordable, and universal local service through access charges alone.

In reviewing the FCC's implementation of interstate access reform and the achievement of federal USF goals, the 10th Circuit Court of Appeals held that TCA-96 "did not dictate an arbitrary time line for transition" from implicit to explicit support nor did it "expressly foreclose the possibility of the continued existence of state implicit support mechanisms that function effectively to preserve and advance universal service."[27] Thus, there is no state mandate to reduce intrastate access charges nor is there a federal timetable or mandate to remove implicit state support. From the very beginning, the goal has been to *replace* implicit support with explicit support to assure continued universal service in a competitive environment. The goal has never been to inordinately shift cost responsibility exclusively to local ratepayers, or to establish temporary explicit support with preconceived termination dates.

Thus, while the TDS Companies generally agree with the basic direction of the AT&T Plan as providing for reduced intrastate access charges through explicit support from a revenue

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[26] 47 U.S.C. § 254(b). "(3) ACCESS IN RURAL AND HIGH COST AREAS. Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."

[27] *Qwest v. FCC*, 398 F.3d 1222, 1233 (10th Cir. 2005).

replacement KUSF combined with reasonable local rate increases, the Companies believe that the specifics of the AT&T Plan should be revised or addressed with respect to the following areas.

1. The Benchmark

The TDS Companies caution that the benchmark set must be reasonable, not only in the "glide path" (which is addressed below), but also as to the final destination.

As the FCC has explained:

> Congress adopted section 254 to help ensure that, as competition develops, explicit support mechanisms would replace, as far as possible, implicit support mechanisms in order to preserve the fundamental communications policy goal of providing universal telephone service in all regions of the nation at reasonably comparable rates.[28]

The FCC has consistently recognized that the states set local rates and are best positioned to meet the standard:

> States, of course, retain primary responsibility for local rate design policy and, as such, bear the responsibility to marshal state and federal support resources to achieve reasonable comparability of rates.[29]

The FCC has subsequently reaffirmed that authority over the comparability standard lies with "the states [that] retain primary responsibility for ensuring reasonable comparability of rates within their borders."[30] The United States Court of Appeals for the Fifth Circuit held that section 254 of the TCA-96 did not affect the proscription in section 2(b) against FCC regulation of intrastate rates.[31] An access revenue replacement fund such as the KUSF contained in the

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[28] *In the Matter of Federal-State Joint Board on Universal Service,* CC Docket No. 96-45*, Order On Remand*, Further Notice Of Proposed Rulemaking, And Memorandum Opinion And Order (Order released October 27, 2003) at ¶ 16. ("In this Order…..[we] adopt measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers.")

[29] *Seventh Report & Order and Thirteenth Order on Reconsideration*, FCC 99-119, CC Docket Nos. 96-5, 96-62 (Order released May 28, 1999) at ¶ 31.

[30] *Id*.

[31] *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) at 421, 424, 446-48.

AT&T Plan is a critical component of and the key to balancing access charge restructuring while maintaining affordable and comparable local rates and services.

The TDS Companies' current basic local service rates range from approximately $11 to $13.50, exclusive of taxes and surcharges. Residential rates, after five years of $2.00 increases, would be grossly excessive at $21.00 and $23.50. The FCC's Wireline Competition Bureau's Statistics of Communications Common Carriers' Report (released September 2010) calculates the national average rate for residential local service as $15.62 per line per month.[32] AT&T's comparable rural Kentucky rate is currently $15.20 per month. Under the AT&T Plan, all TDS Companies' customers in rural areas will be charged more than the national average after just 1 or 2 years of increase. This is not acceptable to either the TDS Companies or their customers.

Certainly the Commission must carefully consider whether imposing such resultant rates on Kentucky's rural local ratepayers would retain rates at reasonable, affordable, and comparable levels. Moreover, significantly escalated rates will arbitrarily accelerate competition losses. For all these reasons, substantial caution should be paid to establishing a benchmark.

While the FCC has previously concluded that all federally allocated loop costs should be recovered from end users, it likewise found that the resulting local rates were too high.[33] Thus, as addressed further in Section II.A.2 below, (the glide path), if interstate and intrastate access rate parity is the appropriate target for intrastate rates, the resultant local rates must

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[32] http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301505A1.pdf at Table 5.11.

[33] *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return For Interstate Services of Local Exchange Carriers*; CC Docket Nos. 00-256, 96-45, 98-77 and 98-166; Second Report and Order and Further Notice of Proposed Rulemaking In CC Docket No. 00-256, Fifteenth Report and Order In CC Docket No. 96-45, and Report And Order In CC Docket Nos. 98-77 and 98-166, released November 8, 2001 ("*MAG Order*") at ¶ 17 ("For example, the costs of the common line or loop that connects an end user to a LEC central office should be recovered from the end user through a flat charge, because loop costs do not vary with usage. Yet the SLC, a flat monthly charge assessed directly on end users to recover interstate loop costs, has, since its inception, been capped due to affordability concerns.")

remain both reasonable and comparable, which likely would require KUSF support continued beyond year 5.

2. The Glide Path

The AT&T Plan sets, as its goal, achievement of intrastate and interstate access rate parity within 180 days of the entry of a Commission Order, with explicit KUSF support to be provided at least through 5 years. At that time, all aspects of the Plan, including continued KUSF support, would be revisited. The TDS Companies believe complete inter/intrastate parity that provides *only* a 5-year glide path, and then so without continued explicit support, is both overly optimistic and not compensatory. The KUSF must be maintained to support the high cost of serving rural areas and to assist companies in maintaining their carrier of last resort obligation. While the FCC has reduced interstate charges to remove implicit support, it created concomitant federal USF support mechanisms to replace the lost interstate access revenues, which mechanisms continue today.

Through the *CALLS Order*[34] in 2000 and *MAG Order*[35] in 2001, the FCC made specific reductions to remove all implicit support from the interstate access rates of non-rural and rural telephone companies, respectively, and initiated an increase in the end-user charge (Subscriber Line Charge - "SLC"),[36] as well as new explicit federal universal service mechanisms. Two federal funds, the Interstate Common Line Support Fund ("ICLS") and Local Switching Support ("LSS"), were created for rate of return carriers such as the TDS Companies, and represent the

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[34] *In the Matter of Access Charge Reform Price Cap Performance Review for Local Exchange Carriers Low-Volume Long-Distance Users Federal-State Joint Board On Universal Service*, CC Docket No. 96-262, CC Docket No. 94-1, CC Docket No. 99-249 and CC Docket No. 96-45, Sixth Report and Order In CC Docket Nos. 96-262 and 94-1 Report and Order In CC Docket No. 99-249 Eleventh Report and Order In CC Docket No. 96-45 released May 31, 2000 ("*CALLS Order*").
[35] *MAG Order*, *supra*.
[36] The residential and single line business SLC was increased by $3.00, from $3.50 to a cap of $6.50 per line, where it stands today.

"explicit" support that was created when the "implicit" support from interstate access rates was reduced. These funds are similar to the KUSF proposed in the AT&T Plan in that they operate as revenue substitution mechanisms.

Interstate access charge reductions did not all shift to the end user through higher local rates, nor was the federal CCL eliminated without an explicit support mechanism being put in place. If, as AT&T proposes, the intrastate non-traffic sensitive revenue requirement ("NTSRR") is also to be eliminated,[37] the costs it currently accounts for should be recovered through the explicit KUSF. A policy that allocates no loop, or any other joint and common costs, to exchange access services completely contradicts any notion of customer class fairness and the importance of recognizing that all customers that use the local loop, including long distance customers, contribute to its cost recovery.

3. The Annual Access Line Adjustment

The TDS Companies believe that once the size of the KUSF is determined, it should not be subsequently recalibrated on the basis of declining access lines. Nor would a reduction in receipts be fair public policy.

The rural ILECs' costs are not reduced when access lines are lost, rather they are stranded. The investment to provide service was undertaken as a result of a long-standing regulatory compact, which requires the rural ILECs to provide ubiquitously available universal service. Even as the rural ILECs lose lines to competition, they must still maintain the associated plant and stand ready to serve. The revenue losses directly and adversely affect their ability to perform public policy functions in an era of competition and universal service. Having met their carrier of last resort obligations over a period of decades, the TDS Companies submit that public

[37] AT&T Comments at 5, note 7.

policy should acknowledge the stranded cost problem. Certainly, the rural ILECs will most likely continue to experience the adverse revenue consequences of line loss, because their tariffed local service and access revenues will continue to erode as lines are lost. Through this one aspect of rate design through the KUSF, the rural ILECs will be able to maintain some fixed and predictable source of revenue.

The objective of reliable and sustainable explicit support to replace the implicit support of current access rates becomes merely illusory if the amount drawn by the rural ILECs is changed annually. Periodic changes after the initial calculations are completely within the discretion of the Commission. The rural ILECs have the carrier of last resort obligation to serve each and every customer. The rural ILECs must invest in their rural networks regardless of declining customer take rates or the increasing presence of competitors. Their declining revenues equate to a dwindling base of investment capital. The rural ILECs cannot exist in unprofitable markets that other carriers choose to abandon, or refuse to serve in the first instance.

As an alternative, the TDS Companies suggest revisiting the access line calibration only at the end of the initial 5-year period. A longer recalculation period has the benefit of capturing predictable receipts over a longer period and is similar to that used for capital expenditure purposes. Further, there is a difficulty and cost of more frequent recalculations upon both the fund administrator and affected carriers. Data tracking, compilation, analysis and reporting are time consuming and burdensome. The same is true of the analysis and implementation required of the Commission Staff or any retained third-party administrator, which adds costs to the KUSF. These burdens increase as the rapidity of the recalculation escalates. The KUSF should initially be set based upon today's data and not subsequently recalibrated, or at most recalibrated only after the initial 5-year period.

4. Contributors to the KUSF

Under the KUSF, support is made explicit. If the contribution obligation is spread across all carriers that utilize the public switched telephone network ("PSTN"), the results will be financially sustainable and competitively neutral. Most states include as the contributing carriers those proposed in the AT&T Plan: incumbents, competitive local exchange companies, wireless carriers and IXCs. Unclear from AT&T's description of including all providers having Kentucky retail intrastate telecommunications revenues is its proposal with respect to VoIP providers. Increasingly, both state regulators and the FCC, have pulled both nomadic and fixed VoIP providers into the mix.

In 2006, the FCC required interconnected VoIP service to contribute to the *federal* Universal Service Fund.[38] The FCC recognized that traffic studies can be utilized to jurisdictionalize traffic that is handled by interconnected VoIP service providers for the purpose of ascertaining the proper level of contribution assessments to the federal USF. In the absence of traffic studies, interconnected VoIP service providers can utilize a "safe harbor" allocation of 64.9% as a proxy for their interstate revenues.[39] Appellate courts agreed that VoIP service providers are analogous to wireline services and may be required to contribute to the Federal Universal Service Fund:

> We conclude that the Commission has statutory authority to require VoIP providers to make USF contributions and that it acted reasonably in analogizing VoIP to wireline toll service for purposes of setting the presumptive percentage of VoIP revenues generated interstate and internationally.[40]

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[38] *In re Universal Service Contribution Methodology, et al.*, WC Docket No. 06-122 *et al.*, (FCC June 27, 2006), Report and Order and Notice of Proposed Rulemaking, FCC 06-94, ¶¶ 53-58, at 27-30 ("*VoIP Universal Service Decision*"); *See* 47 C.F.R. at § 54.706(a)(18).

[39] *Id.* at ¶ 53.

[40] *Vonage v. Federal Communications Commission*, Docket No. 06-1276, U. S. Court of Appeals for D.C. Circuit, Opinion issued June 1, 2007 at 3.

Any confusion over the states' ability to also assess nomadic VoIP providers for state USF funding purposes was recently removed in the FCC's *Nomadic VoIP State USF Declaratory Ruling* released November 5, 2010,[41] wherein the FCC held that the assessment by the states of universal service contribution fund requirements on nomadic interconnected VoIP is appropriate because:

- The goals of universal service are advanced;
- A USF system that is "equitable and non-discriminatory" is maintained;
- State assessment does not conflict with federal rules; and
- Nomadic interconnected VoIP utilizes the PSTN.[42]

Therefore, the FCC ruled "that states may extend their universal service contribution requirements to future intrastate revenues of nomadic interconnected Voice over Internet Protocol (VoIP) service providers so long as a state's particular requirements do not conflict with federal law or policies."[43]

Therefore, consistent with the FCC's decisions, this Commission should clarify the AT&T Plan provision regarding contributing carriers by requiring that all interconnected IP voice service providers earning Kentucky intrastate revenues contribute to the KUSF *using the same the FCC-approved option* that it does for federal USF purposes, namely :

1) The interim safe harbor allocation factor set forth in the FCC's *VoIP Universal Service Decision*, 35.1% intrastate revenues;

2) Actual intrastate revenues; or

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[41] *In the Matter of Universal Service Contribution Methodology; Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Interstate Revenues*, WC Docket No. 06-122, Declaratory Ruling Released November 5, 2010 ("*Nomadic VoIP State USF Declaratory Ruling*").
[42] *Id.* at ¶¶ 1, 2, 6 and 17.
[43] *Id.* at ¶ 1.

3) An FCC-approved traffic study to identify intrastate traffic or any other formula that may be approved in any future FCC decision and authorized by this Commission.

Although, not expressly required in the FCC's Order, the Commission may wish to also mirror the FCC's *de minimis* exemption, so that if the VoIP carrier is not required to pay into the Federal USF programs, they are also exempt from paying into the KUSF.[44]

Finally, the Commission may prudently wish to require VoIP providers to register with it. The FCC's web site identifies, by state, the carriers submitting Form 499-A (Federal USF) to the Universal Service Administrative Company ("USAC").[45] A minor, administrative requirement that interconnected VoIP providers register with the Commission is justified.

The combined intrastate retail revenues of these carriers represent an enormous base across which the recovery of a universal service fund is but a modest imposition. All of these carriers utilize the PSTN in the network provided by the TDS Companies in Kentucky, thus benefitting from the carrier of last resort responsibilities carried out by the incumbent local exchange companies.

5. Assessed Revenues

It is appropriate, as proposed in the AT&T Plan, that the basis of the contribution calculation be retail intrastate revenues. Retail revenue is the basis of federal USF programs and most, if not all, of the states' programs. However, as addressed above, AT&T's use of the term "telecommunications" to describe those retail intrastate revenues[46] may be problematic. As this Commission is aware, one aspect of the controversy over VoIP service is whether it is a

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[44] FCC rules specify that "[i]f a contributor's contribution to universal service in any given year is less than $10,000 that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year unless it is required to do so to by our rules governing Telecommunications Relay Service (47 CFR 64.601 *et seq.* of this chapter), numbering administration (47 CFR 52.1 *et seq.* of this chapter), or shared costs of local number portability." 47 C.F.R. § 54.708; *See also* the FCC's *VoIP Universal Service Decision* at ¶ 61.

[45] http://fjallfoss.fcc.gov/cgb/form499/499a.cfm.

[46] AT&T Plan at ¶6.1.

"telecommunications" service, and therefore a Title II service, or "information," and a Title I service before the FCC.[47] Some carriers have used the distinction to argue that nomadic VoIP traffic need not pay access charges at all. Of course this argument is specious, but the regulatory terminology, nevertheless, has led to dispute and controversy. Therefore, the TDS Companies recommend that the term "telecommunications" be removed in the various references to the revenues assessed for contribution purposes. Instead, the Commission should consider identifying and excluding those services which it does not intend to assess, such as, television programming and other services that do not utilize the PSTN.

Finally, contributions by recipient companies, such as the TDS Companies, should be exempted from assessment or the amount included in the KUSF distribution and, in effect, zeroed out. Requiring uncompensated contribution by the recipient companies is a form of self-funding of access charge reductions. For example, if a company is required to implement $100.00 of access reductions, but pay $1.00 to the fund, the result is $99.00 of revenue neutrality and $1.00 of revenue shortfall. Alternatively, the recipient companies' calculated contribution might be included in the receipts paid them by the KUSF, so in effect, the contribution required is funded and the access reductions remain revenue neutral.

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[47] One of industry's basic legal dilemmas is that TCA-96 did not capture the dynamic of convergence. TCA-96 presumes continuation of separate and distinct industries (telephone, cable, interexchange), operating under their own unique rules. The FCC has found, and the courts affirmed, that TCA-96 continued the FCC's *Computer Inquiry* distinctions between "information" (Title I) and "telecommunications" (Title II) services. "Information" service is lesser regulated under Title I of the Federal Communications Act (FCC regulation is minor or non-existent). Title II, "telecommunications service," on the other hand, is common carrier, utility-style regulation.

The FCC has expressly declined to rule whether interconnected VoIP is an "enhanced" or "information" service:

- "[W]e have not decided whether interconnected VoIP services are telecommunications services or information services." *In the Matters of IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 05-196 (First Report and Order and Notice Of Proposed Rulemaking, released June 3, 2005) ("*FCC VoIP 911")* at ¶ 22.
- "The Commission has not yet classified interconnected VoIP services as 'telecommunications services' or 'information services.'" *In re Universal Service Contribution Methodology, et al.*, WC Docket No. 06-122 *et al.* (Report and Order and Notice of Proposed Rulemaking released June 27, 2006) ("*FCC VoIP* USF") at ¶ 35; *See also*, *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81 (Report and Order and Further Notice of Proposed Rulemaking, released August 6, 2007).

6. Timing of Access Reductions and KUSF Implementation

AT&T has proposed a specific schedule for the mandated reductions in intrastate access charges that presumes the terms of the KUSF, including its initial sizing, collections, and distributions, and the corresponding commencement of intrastate access charge reductions, can all be achieved within 180 days of the entry of a Commission Order.[48] Actual tariff filings implementing the rate reductions must be filed no later than 180 days after a Commission Order, notwithstanding the effectiveness of the KUSF.

While the TDS Companies support a timely implementation of the KUSF, it is absolutely critical that the Commission ensure that actual access rate reductions do not become effective until adequate contributions have been received and the processes for distributions are in place. In other words, the timing of the collection and disbursement activities must be coordinated so that collections are received and accounted for, and disbursements transfer-ready, no *later* than the date when reductions in tariffed rates take effect.

For these reasons, the TDS Companies suggest that the Commission alter the provision regarding the access tariff filings' effective dates to coincide with the actual commencement of the operations of the KUSF, as measured by the Fund's ability to make actual disbursements, and not timed to the entry date of a Commission Order.

III. Conclusion

In summary, the TDS Companies do not oppose a responsible and prudent approach to access reductions, which balances the interests of all parties, including the local ratepayers. Any changes in access charges should be realistically targeted and gradually implemented over a

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[48] AT&T Plan at ¶2.

glide path long enough to allow gradual change and predictability, and implemented in conjunction with explicit external support that is both sufficient and stable.

Respectfully submitted,

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Date: April 15, 2011

April 15, 2011

Mr. Jeff Derouen, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Post Office Box 615
Frankfort, KY 40602-0615

Re: In the Matter of an Investigation Into the Switched Access Rates of Kentucky Incumbent and Competitive Local Exchange Carriers; Administrative Case No. 2010-00398; TDS Telecommunications Corp. Comments

Dear Mr. Derouen:

Pursuant to the Commission's Order entered March 10, 2011 in this matter, TDS Telecom (Leslie County Telephone Company, Lewisport Telephone Company, and Salem Telephone Company) hereby submits its comments. I certify the electronically filed documents are a true representation of the original documents that have been submitted for filing.

Should you have any questions, please let me know.

Very truly yours,

LIEBMAN AND LIEBMAN

James Dean Liebman
Attorney at Law

Certification

I hereby certify that the electronic version of this filing made with the Commission on April 15, 2011, is a true and accurate copy of the document filed herewith in paper form, and the electronic version of the filing has been transmitted to the Commission. A copy of this document has been served electronically on all parties of record for whom an email address is given in the on-line Service List for this proceeding.

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James Dean Liebman