

1 **Q. Please state your name and business address.**

2 A. My name is James A. Appleby. My business address is 6450 Sprint Parkway,
3 Overland Park, Kansas 66251.

4 **Q. Are you the same James A. Appleby who filed Direct Testimony in this**
5 **proceeding?**

6 A. Yes I am.

7 **Q. What is the purpose of your Rebuttal Testimony?**

8 A. The purpose of my Rebuttal Testimony is to respond to certain statements made by
9 witnesses for the other parties in the proceeding. Specifically, I will address certain
10 statements in the Direct Testimonies of Mr. Bruce H. Mottern on behalf of TDS
11 Telecom (Leslie County Telephone Company, Lewisport Telephone Company and
12 Salem Telephone Company) (“TDS”), Mr. Emmanuel Staurulakis on behalf of the
13 Rural Local Exchange Carriers (“RLECs”), Dr. Debra J. Aron and Dr. Ola A. Oyefusi
14 on behalf of Bellsouth Telecommunications, Inc. d/b/a AT&T Kentucky, AT&T
15 Communications of the South Central States, LLC, Bellsouth Long Distance, Inc.
16 d/b/a/ AT&T Long Distance Service and TCG Ohio (“AT&T”), Mr. Joseph Gillan on
17 behalf of the Kentucky Cable Telecommunications Association, TW Telecom, Level
18 3 and PAETEC (“KCTA/ CLECs”) and Mr. Don Price on behalf of Verizon.

19 **Q. Please summarize your testimony.**

20 A. When Congress passed the Telecom Act of 1996, it understood the difficult but
21 important transition that lay ahead for the telecommunications industry. Congress
22 clearly chose to pursue the benefits of a fully competitive telecommunications market
23 over the status quo. This transition has required the re-examination of regulations and

1 public policies that have been in place for decades. The policy that permitted LECs
2 to charge inflated switched access rates is clearly one area Congress expected to be
3 eliminated.¹ The testimony in this case shows high access rates continue to exist
4 today. The LEC rate levels for intrastate switched access service inhibit the
5 development of fair and balanced competition and harm consumers. What we have
6 not seen in this record is any financial proof that those high access rates are needed by
7 LECs in today's vastly changed telecommunications market. We have not seen any
8 proof that ILECs are incapable of altering their businesses to adapt to lower access
9 rates. We have not seen evidence that basic local service rates will become un-
10 affordable if the ILECs choose to collect access revenues reductions from their
11 customers. And we have not seen any proof that the ILECs' status as Carriers of Last
12 Resort ("COLR") causes costs that exceed the revenue opportunities available to
13 them in today's market. This Commission cannot simply assume that the ILECs in
14 Kentucky need to continue to collect high access charges in the form of high access
15 rates or in the form of state universal service payments. There must be some financial
16 demonstration that today's ILECs require a subsidy and that continuing to impose any
17 corporate subsidy (whether in the form of high access rates or a Kentucky USF) on
18 competing carries and Kentucky consumers is in the public interest.

19
20 **Testimony Demonstrates Kentucky LEC Rates are High, Harm Consumers and**
21 **Inhibit Competition**
22

¹ See 47 U.S.C. Section 251(g).

1 **Q. Have the payers of intrastate switched access rates demonstrated the current**
2 **intrastate switched access rates are too high?**

3 A. Yes. Sprint² and AT&T³ each demonstrated the ILECs' current intrastate switched
4 access rates are high in comparison to the ILECs' interstate rates. Verizon explained
5 that the rates are not fair and reasonable as required by statute.⁴ Although intrastate
6 and interstate switched access utilize the same network components and deliver the
7 same functionality, the rates for most LECs operating in Kentucky are far above the
8 rates charged for interstate service.

9 **Q. Does the testimony filed thus far demonstrate conclusively that consumers are**
10 **harmed by the high intrastate switched access rates?**

11 A. Yes. Dr. Oyefusi describes in detail in his Direct Testimony six ways that Kentucky
12 consumers will reap benefits from reductions to intrastate switched access rates.⁵ I
13 explained that lower access rates will permit competitive carriers "to expand
14 coverage, enhance service quality, develop new and innovative service offerings, and
15 provide better pricing in the market" all of which will benefit consumers.⁶ Mr. Price
16 testified that "[t]hese excessive rates impair competition and ultimately harm
17 consumers".⁷

18 **Q. Is testimony clear that competition is also harmed by the high LEC access rates?**

² See Confidential Exhibits JAA-G3 and JAA-G4 to the Appleby Direct Testimony.

³ See Confidential Exhibit DLA-2 to the Aron Direct Testimony.

⁴ Verizon points out current rates are not "fair, just and reasonable" as required by KRS 278.030(1), Price Direct Testimony p. 3, l. 19 – p. 4, l. 3.

⁵ Oyefusi Direct Testimony pp. 11-14.

⁶ Appleby Direct Testimony p. 11, ll. 12-15.

⁷ Price Direct Testimony p. 4, ll. 14-15.

1 A. Yes. Mr. Price explained that “[t]here cannot be a level playing field when certain
2 competitors receive excessive subsidies that others do not, and in some cases receive
3 from the very companies with which they compete.”⁸ Similarly, Dr. Aron testifies
4 that “[t]he current access regime significantly distorts competition across
5 technologies, artificially advantaging some, disadvantaging others, and thereby
6 damaging the ability of the market to put society’s resources to best use to respond to
7 consumers’ preferences.”⁹ Finally, I explained that the high access rates all carriers
8 providing non-local voice services in Kentucky are forced to pay inflate the
9 providers’ input costs, which undercuts the competitors’ retail service offerings.¹⁰

10 **Q. Since the current access rates are harming competition and consumers and**
11 **Congress has enacted law that is designed to develop competitive choices for**
12 **consumers, isn’t it time to reform access rates in Kentucky?**

13 A. Yes. Just as many other states and the FCC have done, the Kentucky Commission
14 should move forward with access rate reductions.

15

16 **ILEC Testimony is Filled with Unsubstantiated Claims and Unfounded**
17 **Assumptions, not Facts**

18

19 **Q. Can you describe the main premise upon which all ILEC testimony (excluding**
20 **AT&T’s) is based in this case?**

⁸ Price Direct Testimony p. 13, ll. 10-12.

⁹ Aron Direct Testimony p. 53, ll. 16-18.

¹⁰ Appleby Direct testimony p. 8, ll. 1-8.

1 A. Yes. The ILECs start with the faulty premise that all monies currently collected in
2 intrastate switched access rates must be collected from alternative sources. While
3 Sprint would not deny the ILECs the opportunity to collect access revenue reductions
4 from services they provide their own customers, guaranteed full replacement of
5 access revenues is problematic when the ILECs couple this main assumption with the
6 assertion that all revenues cannot come from their own end users. If the ILECs
7 expect to continue to collect some or all of the access service overcharges¹¹ from their
8 competitors via the Kentucky USF, Sprint believes the ILECs must prove financially
9 that those funds are needed to operate their business and factually demonstrate that
10 burdening competitors and consumers with a potentially larger Kentucky USF is in
11 the public interest.

12 **Q. Is it clear that the ILEC access rates that exist today were created at a very**
13 **different time and under very different economic circumstances?**

14 A. Yes. When the access rates were originally set, local exchange service and exchange
15 access service were the main sources of revenue for ILECs. Intended to keep local
16 exchange rates artificially low, exchange access was priced well above cost. In
17 discussing this public policy decision, Mr. Price stated: “[b]ut those policy choices, in
18 Kentucky and elsewhere, were made at a very different time and with very different
19 competitive landscape than exists today”.¹² Today, the ILECs offer multiple calling
20 features, long distance calling and broadband service over these same networks.
21 Some ILECs are even using the local networks to deliver high definition video

¹¹ To be clear, the overcharges are the difference between the current intrastate rates and the interstate rates for each of the ILECs.

¹² Price Direct Testimony, p. 10, ll. 5-6.

1 services.¹³ Yes, there were incremental investments to add these services but the
2 fundamental infrastructure necessary to deliver these services, the local network, was
3 largely in place. Sprint has provided significant information about the financial
4 strength of Windstream, the one publicly traded ILEC in the case. Sprint has
5 demonstrated the ILECs generate tens of millions in broadband revenues annually
6 that were not available to the ILECs when the current access rates were established.
7 Finally, Sprint demonstrated the breadth of services the ILECs in Kentucky offer to
8 their consumer base. I believe this financial information suggests that these carriers
9 likely no longer need their high access rates. And the ILECs have provided no
10 financial information to demonstrate the need for the access overcharges. I am
11 simply saying that if the ILECs want to continue to burden the competing carriers
12 and consumers with high access rates or access overcharges shifted to the KY USF,
13 there must be financial proof of a need.¹⁴ The ILEC testimony is devoid of any
14 financial information the Commission could use to show the ILECs continue to need
15 to collect the inflated access rates that exist today.

16 **Q. Do the ILECs contend the reduction in access revenues, if collected from their**
17 **customers, can only come from basic local service rates?**

18 A. Yes. Testifying on behalf of TDS, Mr. Mottern claims that the full access revenue
19 reduction per line, if added to basic local service rates, will result in rates that are
20 potentially devastating.¹⁵ Based on his claim, I assume Mr. Mottern considers it
21 impossible for his company to adapt to any access revenue reduction through

¹³ See Exhibit JAA-G7.

¹⁴ Mr. Price stated that the AT&T plan to shift some access revenues to the Kentucky USF lacks any proof that the ILECs need those funds. Price Direct Testimony, p. 50, ll. 17-19.

¹⁵ Mottern Direct Testimony, p. 9, l. 6 – p. 7 l. 2.

1 additional revenue from other services. I also assume Mr. Mottern would not consider
2 any measures to implement cost efficiencies that could help maintain the same level
3 of operating margins for his company. After all, it is far easier and far more
4 advantageous for Mr. Mottern's company to collect revenue from its competitors than
5 to aggressively market and render services to end users or to reduce its costs.
6 However, encouraging carriers to focus their attention on providing services to end
7 users and increasing cost efficiencies is a much stronger public policy stance than
8 insulating ILECs. I believe the Commission should expect and encourage the ILECs
9 to consider revenue opportunities available from all end user services and the
10 implementation of cost efficiencies as the means for adapting to reduced access rates.

11 **Q. Do the ILECs contend the price of basic local service should be capped, or that a**
12 **local rate benchmark should be set to keep local service rates affordable?**

13 A. Yes. Mr. Staurulakis explained the RLECs support the use of a local service rate
14 benchmark.¹⁶ Sprint also supports the availability of affordable basic voice service.
15 There is ample evidence in record to show the Kentucky ILEC local service rates are
16 far below an affordable rate level. AT&T has suggested an affordability price range
17 of \$18.50 to \$23.50.¹⁷ The Pennsylvania Commission recently ordered an
18 affordability rate of \$23 for rural ILECs in their state.¹⁸ This standard was based on a
19 study created by the Pennsylvania consumer advocate.¹⁹ I believe the Pennsylvania

¹⁶ Staurulakis Direct Testimony, p. 9, ll. 14-15.

¹⁷ Oyefusi Direct Testimony, p. 42, ll. 15-17.

¹⁸ Pennsylvania PUC Docket No. I-00040105, *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund*, Ruling (issued June 30, 2011).

¹⁹ Transcript at 508, *Investigation Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Pennsylvania PUC Docket No. I-00040105 (hearing conducted April 14-16, 2010; cited testimony April 15, 2010).

1 ruling is a reasonable minimum for setting a Kentucky residential local service
2 affordability standard.

3 **Q. Have the ILECs suggested what an affordable basic local service rate would be?**

4 A. No. The ILECs have not suggested at what level basic local service rates become
5 unaffordable.²⁰ TDS has not undertaken a formal study regarding affordability of
6 local service rates.²¹

7 **Q. Does Mr. Mottern believe raising local rates will drive away customers from
8 TDS?²²**

9 A. Yes. But when asked to provide any studies that demonstrate this customer migration,
10 TDS had none.²³ There is no proof that a rate increase of \$1 will alter the customers'
11 choices. There is no information that suggests what the consumer reaction will be if
12 the local service rate is set at \$23. What is clear is that customers should have choice
13 and access reform will help provide more and better customer choices. In any event,
14 insulating any carrier from competition through artificially low rates disservices the
15 public interest.

16 **Q. Do the ILECs contend access reform will have other dire consequences for rural
17 Kentucky?**

18 A. Yes. Mr. Staurulakis states: “[m]oreover, implementation of the AT&T Plan could
19 have adverse impacts on the ability of RLECs to continue providing basic and

²⁰ Staurulakis Direct Testimony, p. 10, ll. 12-15.

²¹ TDS Response to Sprint DR #1(a).

²² Mottern Direct Testimony, p. 10, l. 16.

²³ TDS Response to Sprint DR #1(b).

1 advanced telecommunications services to their rural subscribers at affordable rates.”²⁴
2 Similarly, Mr. Mottern explains that “...decreases in revenues, without countervailing
3 compensation from another source, will “highly impact” the rural telephone
4 companies of Kentucky, their customers and communities served and should not be
5 taken lightly.”²⁵

6 **Q. Please comment on these two statements.**

7 A. I interpret Mr. Staurulakis’s statement to say the RLECs will not have the financial
8 means to provide service at affordable rates. As I stated above, none of the ILECs
9 including the RLECs have supplied any financial information upon which to judge
10 this claim that the ILECs lack the financial or operational wherewithal to adapt to
11 lower access rates and recover those revenues through service they sell to end users or
12 through cost reductions. Also, the ILECs have not even offered what they believe
13 constitutes affordable local service. Mr. Staurulakis’s statement is unsubstantiated.
14 Mr. Mottern is concerned the access revenues will not be replaced. No party to this
15 proceeding has suggested that the ILECs should be foreclosed from opportunities to
16 make up for reductions in access revenues. The disagreement is about the manner in
17 which the ILECs should be permitted to adapt to lower access rates. Sprint and
18 Verizon believe the ILECs should adapt to lower access rates by focusing attention on
19 selling services to their own customers, and not from the Kentucky USF.

20 **Q. Have the ILECs demonstrated they are unable to collect access revenue**
21 **reductions from retail services?**

²⁴ Staurulakis Direct Testimony, p. 3, ll. 18-21.

²⁵ Mottern Direct testimony, p. 4 ll. 20-23

1 A. No. The ILECs have not demonstrated that the rates of their vast suite of retail service
2 offerings cannot be increased to collect some if not all of the access revenue
3 reductions. The ILECs would also have the option of maintaining existing profit
4 margins by offsetting some of the lost access revenues through implementation of
5 cost efficiencies.

6 **Q. Do the ILECs have retail pricing flexibility available to adapt to lower access**
7 **rates?**

8 A. Yes. ILECs have no regulatory pricing constraint on the vast majority of services they
9 offer and are free to price them as they choose. Moreover, to the extent the ILECs'
10 basic local rates are artificially low; they should be permitted flexibility to increase
11 those rates.

12 **Q. Is Sprint opposed to an appropriate transition to parity with interstate access**
13 **rates?**

14 A. No. While access rate reductions are long overdue, in order to move forward, Sprint
15 would be amenable to a proposal that decreases the rate difference between the
16 current intrastate rates and interstate rates \$3.00 per-line per month each year until the
17 intrastate access rates reach the interstate rate. Since the average ILEC customer is
18 paying \$60-\$70 for their retail services they purchase from the ILEC, the \$3.00
19 threshold represents approximately a 5% change in the customer's bill should the
20 LEC choose to shift all of the reduced access revenue through retail rate increases
21 instead of adapting its business by increased revenue from new services or by
22 reducing its costs. Consistent with the AT&T Plan, basic local service rate increases
23 could be limited to \$2.00 with the other \$1.00 per year coming from other services. It

1 is likely that the LECs will recover some of the lost revenues through rate increases,
2 and at least some through cost reductions in order to offset the remaining portion of
3 lost revenues.

4 **Q. Do the ILECs believe most if not all of the revenues should be shifted to the**
5 **Kentucky state USF?**

6 A. Yes. The ILECs believe any increases in their basic local rates should be limited²⁶ or
7 not increased at all and any remaining access revenue reduction should be collected
8 from the Kentucky USF.²⁷

9 **Q. How do the ILECs attempt to connect the need to shift revenues collected from**
10 **high access rates to a Kentucky USF and the concept of carrier of last resort**
11 **(COLR)?**

12 A. ILECs argue that because of their obligation as carriers of last resort, they serve high
13 cost areas where they cannot collect their cost of service. The ILECs contend,
14 therefore, that all carriers should help fund ILEC operations in those areas through
15 payments into the state USF if their high access rates are reduced.

16 **Q. Have the ILECs produced any financial data to support these assertions?**

17 A. No. As stated above, the ILECs have not produced any financial data to prove a need
18 for support from other carriers. There is no data available at a total entity level or
19 more granularly to reflect the economics of serving these specific high cost areas.
20 When asked to quantify the cost of COLR, Mr. Staurulakis stated: “[t]he RLECs are
21 not aware of any proceeding initiated by the Kentucky Commission to calculate the

²⁶ Staurulakis Direct Testimony, p. 4, ll.7-8.

²⁷ Mottern Direct Testimony, p. 6, l. 15 – p. 7, l. 3.

1 cost of being a COLR in Kentucky. Accordingly, the RLECs do not perform any
2 specific type of cost analysis associated with their COLR obligations in Kentucky.”²⁸
3 Yet Mr. Mottern discusses the ILECs’ COLR responsibilities at least three separate
4 times in his Direct Testimony and Mr. Staurulakis discussed the topic at least twice.
5 Mr. Caballero also discussed the significant burden of a carrier being COLR in at
6 least two places in his testimony.²⁹ While the ILECs claim the concept is important
7 to an investigation of the reasonableness of ILEC access rates, they failed to produce
8 any data the Commission could use to evaluate their claims.

9 **Q. If access revenues are shifted to the Kentucky USF, do the ILECs expect these**
10 **funds to be immune to the continuing development of competition?**

11 A. Yes. The ILECs believe the revenues shifted to the Kentucky USF should be set at
12 that fixed dollar amount. Even if a customer of the ILEC chooses to leave the ILEC,
13 the ILECs contend that the ILEC should receive the revenues it used to collect
14 through inflated access rates on that customer line from the Kentucky USF. To be
15 clear, access revenues that used to be subject to competitive loss if the ILEC lost a
16 customer would no longer be impacted by the consumer’s choice to not purchase
17 service from the ILEC. If this standard is adopted, instead of taking another step
18 toward a fully competitive telecommunications market by reducing access rates, the
19 Commission would be taking a step backward away from competitive choice, and
20 insulating ILECs from competition. If the Kentucky Commission decides to burden
21 Kentucky consumers with an access revenue replacement fund, it should at least set
22 the funding level on a per line basis to ensure that funding changes in a manner

²⁸ RLEC response to Sprint #3(a).

²⁹ Caballero Rebuttal Testimony in Case 2007-00503, p. 3, ll. 14-17, p. 28, ll.16-21.

1 consistent with changes in the number of lines served. Of course Sprint does not
2 believe there is a need to shift access revenue reductions to the Kentucky USF in the
3 first place. As Dr. Oyefusi stated, “[b]luntly put, the KUSF money is not free;
4 Kentucky consumers will still bear the burden...”³⁰ Given the complete absence of
5 factual financial evidence to support continuing the imposition of the outdated, anti-
6 competitive, anti-consumer access rates, the Commission should expeditiously reduce
7 these rates. And before the Commission determines to burden KY citizens with an
8 access revenue replacement fund, it needs factual proof that the burden is justified.

9 **Q. Do you agree with Mr. Mottern that shifting access revenues to a Kentucky USF**
10 **makes the fund competitively neutral?**³¹

11 A. Absolutely not. As long as one carrier collects support from all of its competitors, the
12 one carrier will always have a competitive advantage in the market. Verizon’s Mr.
13 Price expressed this same concern in his testimony.³²

14 **Q. Do you agree with Mr. Mottern that the majority of state Commissions have**
15 **used universal service funding when reforming intrastate access rates?**

16 A. While some states have chosen to burden competition and the citizens of their states
17 by setting up a fund, Kentucky is certainly under no obligation to follow those states.
18 The trend has moved away from creating or increasing ILEC draws from state
19 USFs.³³ In regulatory proceedings over the past four years, five out of six states
20 reduced access rates without increasing or establishing a USF. State legislative

³⁰ Oyefusi Direct Testimony, p. 41, ll.10-11.

³¹ Mottern Direct Testimony, p. 1 ll. 9-11.

³² “There cannot be a level playing field when certain competitors receive excessive subsidies that others do not, and in some cases receive them from the very companies with which they compete.” Price Direct Testimony, p. 13, ll. 10-12.

³³ See **Rebuttal Exhibit JAA-1**, attached hereto.

1 actions also reduced the rates in five states. Although state USF funding was created
2 in two of those new laws, the funding is phased out over time in both instances.
3 Finally, two large states, TX and CA, each with very large state USFs, have taken
4 action to greatly reduce the size of their state funds. Clearly, many states understand
5 the burden a state “access replacement” USF places on their citizens, have determined
6 that such a fund is not justified, and have found that such a fund is contrary to the
7 public interest. Others have at least determined that the burden of such funds be
8 imposed only as a temporary mechanism.

9 **Q. Please summarize Sprint’s recommendation in this proceeding.**

10 A. Sprint recommends the Commission require each ILEC and CLEC operating in
11 Kentucky to set its intrastate switched access rate and structure for each individual
12 access service equal to the LEC’s equivalent interstate switched access service rate
13 and structure. Those intrastate rates should continue to mirror interstate levels and
14 structure should future changes in the interstate rates occur. Sprint is amenable to a
15 transition which limits the reduction in the access rate differential to \$3.00 per line
16 per month each year until the intrastate rates reach parity with interstate rates. The
17 ILECs should be permitted to increase basic local service rates by \$2.00 per year with
18 the residential rates capped at \$23.00.³⁴ The residential rate cap should increase
19 annually by the rate of inflation. An ILEC should be permitted to collect the
20 remaining lost access revenues through its other retail services as the ILEC chooses.
21 The first access rate reduction should occur no more than 30 days after the issuance
22 of a final Order in this proceeding. The Commission should issue an Order

³⁴ There is no need to cap basic local service rates for business customers. Affordability considerations should not apply to those customers.

1 expeditiously in order to relieve Kentucky consumers of the ongoing consumer harms
2 caused by Kentucky's high access rates.

3 **Q. Mr. Gillan discussed in his testimony targeting access reform to the LEC**
4 **terminating access charges. Please comment.**

5 A. Mr. Gillan makes several important points in his testimony. For example he points
6 out rate arbitrage occurs almost exclusively on terminating compensation. Sprint
7 agrees bloated terminating access charges are more damaging to competition than
8 originating charges. Targeting rate reductions to terminating rates first and then to
9 originating rates would deliver consumer and competitive benefits more quickly.
10 Within the context of proposal above, Sprint recommends the terminating rates be
11 reduced to interstate rate levels first. Once terminating rates reach interstate levels,
12 originating access rates should then begin to be reduced until those rates also reach
13 interstate rate levels.

14 **Q. Does this conclude your Rebuttal Testimony?**

15 A. Yes, it does.