COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE INTRASTATE SWITCHED ACCESS RATES OF ALLKENTUCKY INCUMBENT AND COMPETITIVE LOCAL EXCHANGE CARRIERS	)))))	Case No. 2010-00398

KENTUCKY CABLE TELECOMMUNICATIONS
ASSOCIATION'S COMMENTS ON AT&T KENTUCKY'S PLAN

Pursuant to the Order entered March 10, 2011, by the Kentucky Public Service Commission seeking comments on AT&T Kentucky's Plan ("Plan") by April 15, 2011, the Kentucky Cable Telecommunications Association ("KCTA") submits its remarks on the Plan.

KCTA is a non-profit organization consisting of 118 cable television systems serving the majority of cable customers throughout Kentucky. Many of the 118 members are competitive local exchange carriers (CLECs) affected by any order regarding intrastate switched access rates. Each member offers different services and serves different types of customers and geographic markets. However, the AT&T plan proposed to the Commission would impact KCTA members.

KCTA opposes the AT&T Plan due to grave concerns about, specifically, funding (and potential contribution levels), and more generically about the scarcity of fiscal detail and an utter lack of impact analysis. Furthermore, KCTA supports the February 18, 2011, motion filed jointly by

TW Telecom of Kentucky, LLC, Level 3 Communications, LLC, and US LEC of Tennessee LLC d/b/a PAETEC Business Services to suspend the procedural schedule and delay any action. KCTA considers the procedural schedule set by the Commission on March 10, 2011, to be inapt and too restrictive, especially in light of the Commission's decision to avoid a final decision or hearing until the Court of Appeals decision in the Windstream Kentucky West and Windstream Kentucky East, LLC, case is final.

In general, AT&T's Plan would negatively affect KCTA members by subsidizing the reduction of intrastate switched access rates with a revenue redistribution plan that has no rational basis or policy justification. Even AT&T admits, on page 6 of its Petition, that "[c]ross-subsidy mechanisms are incompatible with the policy goal of promoting consumer welfare and advancing competition on the merits. The success and failure of competitors are determined on the basis of their relative costs, efficiencies, and quality of services, not by regulatory asymmetries." AT&T's own words notwithstanding the Plan then attempts to 'spin' as a "limited, judicious expansion" of the Kentucky Universal Service Fund ("KUSF") just such a cross-subsidy mechanism, funded by wireline ILECs, CLECs, wireless carriers and IXCs, to replace permanently the revenue streams that ILECs generate from intrastate access charges. It further specifies, in Section 5, that "[n]o earnings test would be required of the ILECs to qualify for the Kentucky USF distributions". KCTA recognizes that access reform plans may serve legitimate and valuable policy goals, such as benchmarking economically justifiable retail rates, but remains steadfastly opposed to embedding within such plans any 'make whole' subsidy funding that guarantees continued profits for certain entities as a matter of tradition rather than documented economic need. To do otherwise would be to endorse regulatory asymmetry and hamstring competitive activity.

AT&T's Plan Fails To Provide Any Empirical Basis For A Rate Change Or A Revenue Shift

The Commission initiated this case to investigate whether switched access rates include above-cost implicit subsidies, if such subsidies are anti-competitive, and whether the Commission should develop a regulatory scheme that establishes a uniform methodology for charging switched access rates. The Plan contains no serious discussion of the merits and drawbacks of a uniform switched access rate, nor does it even establish whether any reform at all is needed for switched access rates at this time or if a KUSF is necessary. Instead, the Commission merely assumes that reform should occur, now, and on AT&T's terms.

This proceeding has not yet addressed threshold issues, including whether a reduction in switched access rates is desirable and, if so, on what timeline and what would be the consequences. Additionally, even if switched access rate reductions would be beneficial and timely, the Commission must specifically consider whether it is appropriate and in the public interest to replace ILEC access charge revenue with an explicit subsidy that is ultimately paid by Kentucky consumers. There is no evidence in the record that the Plan would actually result in better or less expensive service to a significant portion of the Kentucky population. However, there is ample evidence that the Plan would inappropriately create a subsidy for certain ILECs and their customers at the expense of many other Kentucky service providers and consumers. In fact, a similar AT&T-sponsored proposal in Georgia has resulted in a contribution rate increase from .41% to 1.4%.[1] In absolute terms that constituted a 341% increase.

AT&T's Plan Fails To Adequately Describe Key Elements

The AT&T Plan bemoans switched access charges as a way to subsidize artificially low prices for basic local telephone service and yet it sets up an unwarranted subsidy system to replace the alleged existing subsidy.

The Plan is, by any measure, impossible to evaluate objectively, as it fails to include enough information about the proposed KUSF, benchmarks, weighted averages and numerous other variables. It is illogical to attempt to reach final recommendations about the Plan in the absence of the baseline data needed to establish the need for, expected size of the KUSF and the likely effect of the Plan on each party.. At this point, it is simply impossible to say whether the Plan will benefit anyone other than AT&T.

None of the reasons given in the AT&T Plan for the expansion, funding and use of the KUSF provide a sustainable explanation for a subsidy. There is no examination of any alternative methods of revenue recovery, or

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http://www.psc.state.ga.us/ docket number 32235, document number 132746.

any findings of the effects on consumer prices with or without the KUSF. There is also no consideration of the effects of the natural decline of switched access minutes. If consumer use of telephones, specifically long distance calls to landlines, decreases, then a certain amount of revenue will be “lost” without regard to any change in switched access rates. Such a decrease is indicative of a market evolving, technologically and otherwise, and no market participant – or their revenues - should be artificially shielded from those effects.

AT&T’s Plan Will Impose New Costs on Consumers Who Gain Nothing In Return.

AT&T may claim that the establishment of the KUSF makes the AT&T Plan revenue-neutral for some companies by replacing amounts that had been obtained through switched access rates with a subsidy; however, it is certainly not revenue-neutral for consumers. AT&T’s Plan would require a wide-array of companies to pay into the fund and pass along the costs to their customers. The Plan will also allow certain companies to raise customer rates to account for lowering the switched access rates. Nowhere is it clear that customers will benefit.

Additionally, it is not clear that the consumers who would absorb the cost of the subsidy as an explicit line-item on their bills or otherwise would be likely to benefit from the subsidized services. A better policy would be to have retail prices more closely reflect service costs. Perhaps the ILECs could simply rebalance their retail rates so that they are appropriately compensated for the services they provide to their own end-users rather than subsidized by their competitors. Before assessing other carriers for expanded KUSF contributions, eligible carriers – and regulators - should review all internal ILEC revenue replacement opportunities.

Questions Remaining Unanswered by AT&T Plan

In order to meaningfully evaluate the AT&T Plan, its effects on other companies and on consumers, the PSC would first have to obtain information related to the amount of switched access minutes, revenue and rates. For example, the actual number of switched access minutes by company per month over several years is needed in order to evaluate any trends regarding decrease or increase in minutes. Average interstate and intrastate switched access charges per minute by company are needed to evaluate benchmarks, KUSF and revenue. To evaluate the proposed benchmark, information on all billable local exchange lines in service must be obtained, including those in bundled offerings. The estimated tax rate to fund the KUSF and how that rate would be affected by alternative approaches to revenue recovery needs to be explored.

There is no reason for the Commission to act quickly, without gathering first all of the information necessary for a proper evaluation. No emergency exists. Indeed, the exact opposite state exists. The Commission has said that it will not complete this proceeding until the Windstream case presently in the Court of Appeals is decided, as the Commission's jurisdiction is at issue in that case. The case creates a timetable out of the control of the Commission and all parties. As such, the Commission can extend its deadlines and allow more time for comments and information gathering in the proceeding with no ill effect. If the Commission would collect the data needed to determine the trends in switch access minutes, to establish a benchmark, and review possible effects on providers and consumers, then the Parties could provide meaningful comments as well as expert testimony based on firm data.

Respectfully submitted,

__/s/ Janice M. Theriot_____________

Laurence J. Zielke
Janice M. Theriot
Zielke Law Firm PLLC
1250 Meidinger Tower
462 S. 4th Street
Louisville, KY40202
(502) 589-4600
lzielke@zielkefirm.com
jtheriot@zielkefirm.com

CERTIFICATE OF SERVICE

This is to certify that an electronic version of this filing was made with the Commission on April 15, 2011, and copy of this filing 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.

__/s/ Janice M. Theriot_____________
One of the Counsel for KCTA