COMMONNWEALTH 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 CINCINNATI BELL TELEPHONE COMPANY LLC

I. INTRODUCTION

In its March 10, 2011 Order, the Commission established a procedural schedule and invited all parties to provide feedback on AT&T Kentucky's Plan ("the Plan") or alternate proposals to AT&T Kentucky's Plan by April 15, 2011. The Commission also ordered all ILECs to provide the amount of Access Revenue Shift they would experience if their intrastate switched access rates mirror their interstate switched access rates. Cincinnati Bell Telephone Company LLC ("CBT"), as a Kentucky ILEC, was automatically made a party to this proceeding and filed initial comments on December 20, 2010. CBT hereby provides its feedback on the Plan.

Summary of the Plan

The proposal by AT&T Kentucky would require all carriers to mirror their interstate and intrastate switched access rates. Carriers who are required to reduce their intrastate access charges would be allowed to recover the lost revenues from a Kentucky Universal Service Fund ("KUSF"). The Plan would establish a local exchange service benchmark rate and require ILECs who must reduce their intrastate access rates to increase their local access line rates to the Benchmark (or to impute such an increase) in order to be eligible to draw from the KUSF. Such increases would be phased in over five years at a maximum increase of $2.00 per month per year

or the difference between the retail rate and the benchmark, whichever is less. Any provider with Kentucky retail intrastate telecommunications service revenues would be required to contribute to the KUSF based upon a percentage of its revenue. Under the proposed plan, CBT, as well as several of its affiliated companies, would be required to pay a proportion of intrastate retail telecommunications service revenues into the proposed KUSF to subsidize the access charge reductions of the ILECs. The Plan would allow contributing carriers to recover their contributions from their end users.

II. GENERAL COMMENTS ON INTRASTATE ACCESS CHARGE REFORM

A. The KUSF Would Replace Existing Subsidies With An Arbitrary New Subsidy.

The sole beneficiaries of intrastate access charge reductions are the interexchange carriers ("IXCs") that terminate intrastate long distance calls to customers of the affected ILECs. Inexplicably, AT&T Kentucky proposes to shift the cost of those access charge reductions, which only benefit the IXCs, onto all other Kentucky carriers and their customers through the KUSF.

The Commission should not move forward with a plan that asks all Kentuckians to subsidize such access reform without a thorough analysis of the impact of the access charge reductions on the affected carriers and a comparison of the rates of the companies to be subsidized with the rates of companies that would be required to contribute.

At a time when citizens across the country are demanding less government intervention in the private sector and more fiscal responsibility, the idea of creating a new government-sponsored subsidy seems incongruous. While the Commission's apparent goal is to eliminate implicit subsidies that are allegedly contained in intrastate switched access rates, the solution is not to replace them with new express subsidies arbitrarily extracted from sources that have no

relationship to the costs that are being subsidized. The economically efficient approach would be to remove the subsidies altogether and to assign costs where they belong – with the parties that cause them. The Plan would remove the subsidy costs from IXCs (who have a direct nexus to the access charges, as they actually use the local networks of the affected carriers) and, to the extent it is not recovered through rate increases by the affected ILECs, would shift the cost onto other carriers and their customers, who have nothing to do with causing those costs.

B. The Commission Should Gather More Data Before Implementing the KUSF.

Utility ratemaking has always been about providing utilities with the *opportunity* to earn a reasonable return, not about guarantees. If the Commission decides to require carriers to reduce their intrastate switched access rates, there is no requirement that the Commission create an insurance fund to guarantee that carriers reducing their access rates will recover all revenue attributable to the rate reductions. CBT believes that a threshold inquiry needs to occur before the Commission implements a KUSF. Namely, eligible carriers should have to demonstrate in detail what their revenue shortfalls would be through reducing intrastate access charges and to demonstrate that they have exhausted reasonable opportunities to raise such revenues from other services. For example, if an eligible ILEC is charging a low monthly rate for local service, it would seem inappropriate for that company to automatically draw support from a KUSF funded by other companies that already charge higher rates for local service. The eligible ILEC should first raise its own rates to at least the level of the contributing carriers. The Commission should obtain as much data as necessary to determine that an eligible carrier has exhausted internal revenue opportunities before assessing other carriers to provide that revenue. All participants in this proceeding should have access to the data (subject to a reasonable protective order as necessary) in order to independently test assertions that more revenue is necessary.

As currently proposed, the Plan would require access charge reductions and automatically implement the KUSF to replace the lost revenue. The Commission would gather data only to determine how much to pay each company that reduces access rates and how much to collect from each contributing carrier. The Commission's role should be far more than a mere calculator. The Commission ought to gather data and thoroughly analyze it *before* any decision is made about what to do. The Federal Communications Commission ("FCC") has realized the importance of data gathering in developing policy to the extent that it now ensures that policy analysis is data driven. Without the benefit of data, decisions are made on intuition or guesswork instead of facts. At this point, no one knows the degree to which eligible carriers will be required to reduce access charges, the amount of the revenue shortfall any carrier will need to make up, or the degree to which revenue may be generated by raising rates for other services. These important matters should be considered prior to implementing a KUSF or assessing other carriers to contribute to the KUSF. It may take a little more time to do it right – but in the long run basing a plan on sound data is more important than a rush to judgment. This is warranted to ensure that any plan is well-researched and well-reasoned to achieve a policy that promotes a competitive telecommunications marketplace and protects the interests of all Kentucky telecommunications consumers.

III. COMMENTS ON SPECIFIC PROVISIONS OF THE PLAN

A. The Plan Should Not Automatically Require Access Rate Reductions

Section 2 of the Plan would automatically require all Kentucky ILECs to implement intrastate switched access rates that are identical to their interstate switched access rates within 180 days following the Commission Order implementing the plan. There are two problems with this approach. First, the Commission has no jurisdiction over the switched access rates charged by CBT or other carriers who elected alternative regulation under KRS 278.543. CBT fully explained its position on this issue in its initial comments on December 20, 2010, so CBT will not repeat it here. The Commission only has jurisdiction over the access rates of ILECs that did not elect the alternative price regulation plan.

Second, with respect to non-electing carriers, over whose intrastate access rates the Commission does have jurisdiction, there has been no demonstration that the existing rates are unreasonable. The Commission should first determine whether existing intrastate access rates of non-electing carriers are unreasonable – it is not automatically given that rates are unreasonable just because they are higher than interstate rates. Each company whose access rates would be affected should be allowed to defend the reasonableness of its rates. Pursuant to KRS 278.260 and/or KRS 278.270, the Commission must afford those companies a formal public hearing to determine reasonable intrastate switched access rates. Rates cannot just be dictated.

If some intrastate switched access rates are found to be unreasonable, the Commission should require the affected ILECs to maximize their basic access line rates prior to receiving any money from the KUSF. If the Commission is concerned about rate shock caused by immediate rebalancing, a way to minimize the immediate impact on carriers and consumers would be to

phase in switched access rate reductions over several years in coordination with gradual increases in access line rates. If done in that order, a KUSF might not be necessary.

B. Timing Issues

The timing of various steps in the Plan is unclear. Section 2 of the plan calls for implementation of ILEC intrastate access charge reductions one-hundred eighty days after the Commission's Order, the date of which is currently unknown. Distributions from the KUSF would be determined on a calendar year basis based on the difference between the revenue that would have been generated by the old rates and the revenue generated under the new rates. The Plan does not address how to deal with a partial year. This should be fixed by establishing the same effective date for access rate reductions as is used to determine KUSF withdrawals. In order for the initial Total Access Revenue Shift calculation to match distributions from the KUSF, the implementation date for the rate reductions would have to coincide with the beginning of the calendar year for the KUSF withdrawal calculation.

C. Benchmarking

Section 3 of the Plan would establish a Benchmark rate that is a key factor in determining whether and how much an ILEC may withdraw from the KUSF. The Benchmark establishes the extent to which the ILEC must increase its local rates in lieu of drawing from the KUSF. While CBT agrees that any access reform plan should require increases in access line rates to ensure that the retail rates of eligible carriers are comparable to the rates of contributing carriers before a carrier may draw from the fund, the Plan's approach to the Benchmark falls short in several respects. First, it does not offer any methodology for establishing the appropriate Benchmark, which will be critical to the success of the Plan. There are many ways in which a benchmark rate could be established. The Commission should first establish the policy goals of the Benchmark,

then gather appropriate information, then conduct a proceeding to actually establish the Benchmark amount. The general idea of a benchmark is to ensure that carriers who wish to withdraw funds from the KUSF are charging their own customers an appropriate rate for service before obtaining outside help. But the Plan offers no guidance on how to do that. One approach may be to use an average retail rate (including any intrastate EUCL or SLC) of the ILECs who are not required to reduce their intrastate access rates. This benchmark would ensure that the ILECs drawing from the KUSF are required to absorb a burden comparable to ILECs that would have to contribute to the KUSF, while ensuring that their retail rates are not out of line with the rates of other ILECs. This would help to minimize the size of the KUSF and ensure that other Kentucky consumers are not asked to pay to keep rates low for a small subset of consumers. The Plan is totally silent as to both the policy behind the Benchmark and the process for establishment of the amount.

Second, the Plan may not move local rates to benchmark levels quickly enough. AT&T Kentucky proposes a maximum $2.00 per year price change, with an overall maximum change of $10.00 over five years. At this point, the Commission has not gathered the data necessary to determine any carrier's Total Access Revenue Shift, nor the average revenue per access line that would have to be recovered for access rate reductions to be revenue neutral. Until that information is known, the proposed $2.00 annual cap on price changes is completely arbitrary. The Commission should compile data sufficient to determine how much intrastate access revenue each affected carrier would have to give up under the plan and how much local exchange rates would have to be increased for each carrier to recoup that revenue. Only after that information is known can the Commission set reasonable milestones for annual price

changes. The faster the offsetting rate increases can be implemented, the more the KUSF can be minimized or avoided.

Third, to the extent the rebalancing of local rates must be phased in over time for a particular carrier, there is no corresponding phase-in for access charge reductions. The KUSF could be avoidable if, rather than implementing 100% of the access charge reductions immediately and phasing in local exchange rate increases, the access charge reductions were similarly phased in over time. By synchronizing the access charge reductions with local rate increases, the Commission may be able to avoid creating any shortfall for the affected ILECs and thereby eliminate the need for a KUSF to fill that shortfall.

The Plan contemplates that the five-year phase in of local rate increases would gradually reduce the size of the KUSF, if not eliminate it altogether. But there is no provision beyond the initial five years for phasing out the KUSF. Eligible carriers should continue rate rebalancing until the KUSF is eliminated. Since the KUSF would shift the cost of funding the access charge shortfalls to other carriers and their customers, who have no relationship to the withdrawing carriers or their revenue losses, the Commission should do everything possible to minimize the size and duration of a KUSF. By gathering the necessary data before deciding on a plan and economic limits within the Plan, the Commission could very well discover a means of avoiding having to create the KUSF at all.

D. The Plan May Not Involve Carriers Electing Under KRS 278.543.

Section 3.1 of the Plan is unlawful and would unnecessarily increase the size of the KUSF. This section of the Plan would only apply to carriers that elected alternative regulation under KRS 278.543. But the intrastate access rates of those carriers are beyond the jurisdiction of the Commission, so the Plan should not be addressing them. In any event, to CBT's

knowledge, all electing carriers that adopted the KRS 278.543 alternative regulation plan did so in July 2006, so they should be free of the rate caps in July 2011, prior to the effectiveness of any access charge reductions under the Plan. Therefore, this provision would never come into play and should be deleted from the Plan.

E. The Calculation of KUSF Withdrawals Would Overstate Revenue Losses

Section 4 of the Plan describes how withdrawals from the fund would be calculated. There is a serious flaw in the calculation that would overfund access revenue losses.

Section 4.2 would calculate an ILEC's Per Line Access Shift by dividing the Total Access Revenue Shift by the number of local exchange lines in service as of October 31. The purpose of this calculation is to make annual adjustments to reflect the change in the number of access lines from year to year. But the manner in which the adjustments would be calculated would preserve the Per Line Access Shift as calculated in the first year of the plan and thereafter apply the same average per line to the number of lines in service as of October 1 of the most recent year. This method of adjustment will unduly preserve a subsidy based upon the usage levels in place at the outset of the plan. A KUSF should only address access revenue losses caused by reductions in rates. If changes in access revenues are due to a decline in usage from year to year, the Plan would not adjust for that decline. Subsidizing revenue losses based on the initial per line average would improperly shift an additional burden onto other carriers and their consumers that is unrelated to the mandated access rate reductions.

Section 4.4 of the Plan uses the Per Line Access Shift to calculate an ILEC's Annual Access Revenue Shift for the upcoming year by multiplying it by the number of access lines in service as of October 31 of the most recent year. As noted above, this has the effect of preserving initial access usage levels for the life of the plan, when such usage has been declining

and should reasonably be expected to continue to decline in the future. Usage reductions must be taken into consideration as not to overcompensate ILECs for more than their losses resulting from access charge rate reductions.

The problem with this method of calculation carries over into the various subparts of Section 4.6, which determine the amounts ILECs may withdraw from the fund each year. For example, in Section 4.6.2(a), the previous year's withdrawal amount is adjusted up or down by the change in the number of access lines, multiplied by the Per Line Access Shift times twelve.

The fund should only replace revenue lost by mandated decreases in *rates*, not decreased demand, so the effect of demand reductions should be filtered out on a current basis. If the number of access lines would grow, but minutes of use decreased, the formula would actually increase the payments to eligible carriers, when they should decrease because access usage has decreased.

A better method of calculating the amount of the KUSF would be to determine the Annual Access Revenue Shift by calculating it directly using the per minute switched access rate reduction for each affected ILEC multiplied by its minutes of use. Under this approach, withdrawing carriers would only be compensated for actual switched access revenue losses, less revenues made up (or imputed) through other rate increases. In fact, the withdrawals could be determined on a more current basis (the federal USF, for example, is adjusted quarterly), using actual billed minutes of use, rather than relying upon year end line counts and outdated per line access charge averages.

Finally, the Commission ought to cap the amount an ILEC may draw from the fund based upon initial quantities and ratchet the cap downwards any year in which the Total Access Revenue Shift declines.

F. Contributors to the KUSF Should Be Expanded

Section 6.1 of the Plan identifies providers that would be required to contribute to the KUSF, but does not include VoIP providers. Kentucky law recognizes that competition between traditional telephony, cable television, Internet and other wireless technologies has become commonplace. KRS § 278.546. Many of the current competitive retail line losses being experienced by ILECs are due to the activities of cable companies and other interconnected VoIP providers. It would be very unfair for VoIP providers to escape contributing to the KUSF. The KUSF will increase the cost of doing business for ILEC contributors, either by increasing their direct costs if they absorb the contribution, or by increasing the prices of their products, if they choose to pass the contribution on to end user customers as a surcharge. If cable and other interconnected VoIP providers do not have to contribute to the KUSF, they would not incur that cost and would not have to add the cost to their customers' bills. This would give them an unfair competitive advantage.

If the Commission establishes the KUSF, it should require interconnected VoIP providers to contribute directly to the fund based on their end-user retail revenue. Any federal question regarding the authority of the Commission to impose revenue-based assessments on interconnected VoIP providers was removed by the FCC's Declaratory Ruling[1] in which it concluded that state universal service fund assessments on nomadic interconnected VoIP service are not preempted if they are consistent with the FCC's contribution rules and the state does not assess intrastate revenues associated with services provided in another state.

---

[1] Declaratory Ruling, *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, FCC 10-185, (released Nov. 5, 2010).

Section 6.2 of the Plan states that the KUSF contribution methodology would mirror the federal USF contribution methodology. Because interconnected VoIP providers are required to contribute to the federal USF fund based on their interstate revenues, the Plan should be changed accordingly to broaden the scope of contributing carriers to include interconnected VoIP providers and require them to contribute based upon their intrastate revenues. If the Commission determines that there is some state law barrier to assessing interconnected VoIP providers for the KUSF, then the Plan should not be adopted and all carriers required to reduce their access charges should have to recoup any lost revenues through rate increases for their other services.

G. The Plan does not address imbalances between contributions and withdrawals from the KUSF.

There would likely be imbalances in the KUSF from year to year because overall intrastate revenues will not be precisely the same from year to year. The Plan proposes to fix the amount of withdrawals based upon the number of access lines in service for drawing carriers as of October 1 of the past year. Contributions from contributing carriers, however, would be based on a percentage of estimated revenues for the upcoming years. Apparently, the Commission would calculate an assessment percentage that would be applied to all intrastate telecommunications revenues in the upcoming year. To the extent future revenues vary from the estimates, the fund could become too small in any given year because contribution rates were fixed on estimated revenues. Any changes to the fund due to market exit could compound that effect. The Plan does not address how any shortfalls in the KUSF would be covered.

H. IXCs Who Charge Higher Intrastate Rates in Kentucky Should Be Required To Flow Through the Benefit of Access Charge Reductions.

The Plan does not address rates charged by IXCs for intrastate interexchange services. As this proceeding originated from complaints by IXCs about intrastate access charges, it is only

appropriate that if any IXC charges Kentucky customers higher rates for intrastate toll calls, it should be required to eliminate the rate disparity between its Kentucky rates and its interstate toll rates effective upon the date mirroring goes into effect. Otherwise, the exercise of mirroring intrastate access rates and creation of a KUSF would just provide the IXCs with windfalls. In the past, when the Commission has ordered access charge reductions, it has also required IXCs to pass through the savings.[2]

IV. ACCESS REVENUE SHIFT

The March 10, 2011 Order required all ILECs to provide the amount of Access Revenue Shift they would experience if their intrastate switched access rates mirrored their interstate switched access rates. As CBT stated in its initial comments and in its comments on the AT&T Kentucky Plan above, by virtue of its election of alternative regulation pursuant to KRS 278.543, the Commission does not have jurisdiction to set CBT's rates for intrastate switched access service. Strictly for informational purposes, CBT is providing the Commission with what would have been its Access Revenue Shift, as defined in the proposed AT&T Kentucky Plan. Using 2010 calendar year rates and quantities, had CBT's intrastate rates mirrored its interstate rates, the difference in revenue would have been $1,376,607.51.

V. CONCLUSION

CBT would urge the Commission not to adopt the Plan as proposed. The Commission must first conduct an appropriate proceeding pursuant to KRS 278.260 or 278.270 to determine whether any access reductions are required. It cannot simply be assumed that current intrastate switched access rates are unreasonable and should mirror interstate rates. Nor may the

---

[2] *See* Order dated Aug. 3, 2000, In the Matter of Review of BellSouth Telecommunications, Inc.'s Price Regulation Plan, Case No 99-434.

Commission change the intrastate access rates of carriers that elected alternative regulation under KRS 278.543. The Commission should then gather sufficient data to determine the extent to which non-electing ILECs would experience revenue reductions from any required intrastate switched access rate reductions. Then the Commission should determine the impact of that revenue loss and assess whether the affected carrier could make up the revenue loss by rebalancing its own local exchange service rates. A KUSF should only be considered after local rate rebalancing has ensured that all ILECs making withdrawals from the KUSF have raised their local exchange rates to the level of the contributing ILECs. If the Commission then decides that a KUSF is necessary, the structure of the proposed AT&T Kentucky Plan should be amended in accordance with Cincinnati Bell's comments herein.

Respectfully submitted,

____

Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, Ohio 45202
(513) 621-6709
(513) 621-6981 fax
dhart@douglasehart.com

Attorney for Cincinnati Bell Telephone Company LLC