

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

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

**COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY LLC**

By Order entered on March 22, 2012, the Commission instructed all parties to file comments within 30 days. The comments were to address the Commission’s finding that the November 18, 2011 Order of the Federal Communications Commission<sup>1</sup> left the Commission with limited jurisdiction over intrastate terminating access rates and to suggest how this proceeding should progress. The comments were also to address the non-traffic sensitive rate element and any intentions to implement the Access Recovery Charge (“ARC”). Cincinnati Bell Telephone Company LLC (“CBT”) hereby responds to the Commission’s Order.

**I. THE COMMISSION DOES NOT HAVE JURISDICTION TO INVESTIGATE OR CHANGE INTRASTATE ACCESS RATES OF “ELECTING UTILITIES.”**

CBT agrees that the FCC’s ICC/USF Order places limits on the Commission’s jurisdiction over intrastate terminating access rates. The FCC considered two approaches to access reform: one in which the states managed the intrastate transition and recovery and the other in which there is a more predictable nationally uniform approach. The FCC decided to pursue the latter course, which best advanced its policy goals.<sup>2</sup> While the FCC’s ICC/USF Order did not *per se* prohibit further state access reform in parallel with the FCC’s reforms, state action

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<sup>1</sup> Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 07-135, et al., *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers* (“ICC/USF Order”).

<sup>2</sup> ICC/USF Order, ¶ 790.

would be preempted where it is inconsistent with the requirements of section 251, or when the state regulation substantially prevents implementation of the requirements of section 251 or the purposes of sections 251 through 261 of the Act.<sup>3</sup>

There is no legal or policy reason for the Commission to act now that the FCC has laid out a comprehensive intercarrier compensation reform plan. And there is no reason to undertake the cost or burden of creating and administering a state access reform fund for whatever small cost recovery might be left to LECs beyond what will be afforded by the federal funding mechanism.

The FCC has ordered the reduction of intrastate terminating switched access rates by 50 percent of the differential between the current intrastate rate and the interstate rate by July 1, 2012. Intrastate terminating switched access rates are to be reduced to interstate rates by July 1, 2013. A number of parties have sought reconsideration or judicial review of the ICC/USF Order and are expected to challenge, among other things, the FCC's assertion of jurisdiction over intrastate access rates. However, at the present time, there is no stay of the effectiveness of the ICC/USF Order, so all carriers will be required to follow it, until and unless a court orders otherwise.

Irrespective of any limits the FCC may have placed on the Commission's jurisdiction to affect intrastate access rights, CBT would reiterate that the Commission does not have jurisdiction over intrastate switched access rates of an "electing carrier" under KRS 278.543, such as CBT. KRS 278.543(6) provides that, upon election, the electing utility's rates are automatically deemed to be just and reasonable under KRS 278.030. The Commission lacks any statutory authority to affect access rates that are compliant with KRS 278.543. CBT has

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<sup>3</sup> ICC/USF Order, ¶ 767.

articulated this argument in depth in earlier comments, so it will not burden the record by repeating it here. Suffice it to say that, to the extent the FCC has left state commissions with authority over intrastate access rates, under Kentucky law such authority does not extend to electing utilities.

## **II. THIS PROCEEDING SHOULD BE TERMINATED**

The FCC has set out a comprehensive reform plan for intrastate terminating access rates and continues to consider reform of originating access rates. The instant proceeding was largely grounded on the concern that intrastate access rates exceeded interstate access rates. The ICC/USF Order will eliminate that issue with respect to terminating switched access in just a little over a year. Half of the difference will be eliminated on July 1, 2012, with the remainder on July 1, 2013. The ICC/USF Order will then continue to reduce terminating access rates over time until they are eventually eliminated in favor of a bill and keep regime. The ICC/USF Order will allow carriers to implement an ARC, subject to certain limits, to recover the foregone access revenue from end user customers. Eligible foregone access revenue not recovered via the ARC can be recovered from the ICC portion of the Connect America Fund (“CAF”). This combination of rate rebalancing mechanism and CAF reimbursement renders it unnecessary for this Commission to create a separate state funding mechanism.

The ICC/USF Order will result in a speedier equalization of intrastate and interstate rates than likely would have been accomplished through this proceeding. The Commission has not set this matter for hearing. In the meantime, the FCC issued the ICC/USF Order, which requires that 50 percent of the rate discrepancies be eliminated by July 1, only a little over two months from now. The remaining difference will be eliminated one year later. As this matter has not been set for hearing and the issues have changed substantially as a result of the ICC/USF Order,

even if the Commission was inclined to go forward now, it would be necessary to solicit new and different testimony and rebuttal testimony. Accounting for the necessary lead time for testimony, noticing a hearing, conducting the hearing and post-hearing briefing, issuance of a decision and likely appeals, it is highly unlikely that an effective access reform order could come out of this proceeding and be implemented until intrastate and interstate access rates will already have been equalized as a result of the ICC/USF Order. There is no reason to continue with this process or to require the expenditure of time and resources by the Commission and the parties when the proceeding is essentially moot. The Commission ought to close this proceeding and instead focus on implementation of the reforms already ordered by the FCC.

Even though the ICC/USF Order did not require changes to originating access rates, the Commission should not proceed on that front either. The FCC sought additional comments on originating access in an FNPRM. The FCC was of the view that originating access charges were not as serious a problem as terminating access and that further study was necessary before choosing a course of action. The Commission should wait and see what the FCC does in that regard before taking any action.

### **III. NON-TRAFFIC SENSITIVE RATE ELEMENT**

CBT is not sure what the Commission is seeking with respect to comments on the non-traffic sensitive rate element. The Commission may be attempting to address the Non-Traffic Sensitive Revenue Requirements of rate of return carriers. As a price cap carrier, CBT does not have a revenue requirement or non-traffic sensitive intrastate switched access rate element. To the extent the Commission determines that it has authority to order reductions of other carriers' non-traffic sensitive rate element, CBT would reiterate its earlier comments in opposition to the creation of an intercarrier fund to replace any such lost revenues.

#### **IV. ACCESS RECOVERY CHARGE (“ARC”)**

In accordance with the ICC/USF Order, CBT will be reducing its intrastate terminating switched access rates by 50 percent of the difference between the intrastate rates and the interstate rates for the same rate elements on July 1, 2012. As authorized by the ICC/USF Order, CBT intends to implement an ARC to offset its revenue loss. While the exact amount of revenue reduction and ARC is subject to calculation and has not been specifically determined, CBT anticipates that the initial ARC would be below the limits of \$0.50 per consumer and small business lines and \$1.00 per line for multi-line businesses imposed by the ICC/USF Order.

Respectfully submitted,

s/ Douglas E. Hart

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