

COMMONWEALTH 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

Adm. Case No. 2010-00398

**Joint Motion of
TWTC, Level 3, and PAETEC
to Suspend Procedural Schedule**

tw telecom of kentucky, llc (“TWTC”), Level 3 Communications, LLC (“Level 3”), US LEC of Tennessee L.L.C. d/b/a PAETEC Business Services (“PAETEC”), through their under-
signed counsel, hereby jointly move the Commission to suspend the procedural schedule set out
in Appendix A to its Order entered March 10, 2011. Neither the parties nor the Commission
should dissipate limited resources in efforts that will be duplicative of, or undermined by, rulings
of the Court of Appeals in Case No. 2009-CA-1973 or of the FCC with regard to pending
proposals for intercarrier compensation reform. In further support of this motion, the Joint
Movants state as follows:

1. TWTC and Level 3 were granted full intervention in this proceeding by Orders issued December 8, 2010; PAETEC, by Order issued February 2, 2011.
2. In Joint Public Comments filed in this proceeding on December 16, 2010 (p.2 ¶3), TWTC and Level 3 stated that they anticipated that the Federal Communications Commission (“FCC”) would issue a notice of proposed rulemaking (“NPRM”) in which the FCC would seek, *inter alia*, to address interstate and intrastate switched access, reciprocal compensation, and universal service in a holistic fashion.

3. On February 8, 2011, the FCC adopted the anticipated NPRM, in a “Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking.” FCC 11-13 (released 2/9/11), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/FCC-11-13A1.pdf (last visited Mar. 14, 2011). The proposed rules and a call for comments have been published in the Federal Register, on March 2, 2011. *See* 76 FR 11632-63, available at <http://www.gpo.gov:80/fdsys/pkg/FR-2011-03-02/pdf/2011-4399.pdf> (last visited Mar. 14, 2011). The NPRM proposes immediate and comprehensive reforms relating to intercarrier compensation, *see* FCC 11-13 part II.B, pp. 15-18 (¶¶34-44), including an approach in which:

the Commission would use the tools provided by sections 251 and 252, 47 U.S.C. 251, 252, to unify all intercarrier rates, including those for intrastate calls, under the reciprocal compensation framework. Under this framework, the Commission would establish a methodology for intercarrier rates, which states then work with the Commission to implement.

76 FR 11644, ¶135 (Mar. 2, 2011). Comments on this approach and other NPRM proposals and issues are due on or before April 18, 2011 and reply comments are due on or before May 23, 2011. *Id.* at 11632.

4. On February 18, 2011, the Joint Movants filed a full copy of the NPRM, to make it part of the record in this proceeding and to alert all parties hereto to its release and contents. The accompanying Joint Filing and Suggestions encouraged the Commission to participate in the comment process and suggested that “this Commission take no action (or formally hold this proceeding in abeyance) until the FCC has decided on an approach.” Joint Filing p. 2 (¶5).

5. The 3/10/11 scheduling Order does not acknowledge the NPRM or specifically mention the 12/16/10 Joint Public Comments or the 2/18/11 Joint Filing and Suggestions. Instead, the Order cites Court of Appeals Case No. 2009-CA-1973, which raises “the possibility of the Commission’s jurisdiction shifting during this proceeding” as to four ILECs, and

indefinitely postpones taking concluding steps in this proceeding before the Court of Appeals case is final. 3/10/11 Order p.2. The NPRM represents change of greater scope and certainty, intending to “implement a transition away from per-minute intercarrier compensation” and raising the concrete possibility of the Commission’s jurisdiction shifting as to the switched access rates of all carriers. 76 FR 11643, ¶¶126-27.

6. The scheduling Order, however, makes no accommodation for the effects of the NPRM and even sets competing deadlines. Instead of the FCC’s proposed rules, it requires the parties to focus on “AT&T Kentucky’s Plan” — without specifying what that plan is¹ — and to comment or propose alternatives thereto by April 15, 2011 — three days before comments are due on the FCC NPRM. 3/10/11 Order Appx. A. Deadlines for propounding data requests and responding thereto, *id.*, bracket the NPRM reply comments due-date of May 23, 2011.

7. The immediate and comprehensive reforms proposed in the NPRM may remove the jurisdictional foundation of this investigation and will fundamentally alter its framework. The procedural schedule set in the 3/10/11 Order asks participants in this proceeding to engage substantial time and effort in inquiries, data collection, and comment that will be out-of-date even as it is being filed. As the RLECs have pointed out, there are substantial inefficiencies and hardship involved in such overlapping proceedings:

[O]pening a parallel state regulatory proceeding would: (i) force the RLECs to spread their already limited resources even thinner in order to effectively participate in both the federal and state regulatory proceedings; (ii) likely lead to unnecessary duplication of effort and expense; and (iii) possibly generate disparate outcomes at the state and federal level. None of these outcomes is in the public interest for customers served by the RLECs in Kentucky.

¹ The phrase does not appear in the body of the 3/10/11 Order, nor does it appear in the 11/5/10 Order initiating this investigation.

Initial Position regarding Intrastate Switched Access Rate Reform, filed May 11, 2010, in Case No. 2010-00162, p.3.²

8. Neither the RLECs nor the CLECs have the resources to perform the steps involved in this proceeding now and again later when its context has been changed or its premises undermined. Given the fact that the FCC has acted and is moving forward with its reforms, the Joint Movants request that the Commission suspend the procedural schedule until either the Court of Appeals or the FCC rules.

Respectfully submitted on behalf of TWTC,
Level 3, and PAETEC:

s/d Katherine K. Yunker
yunker@desuetude.com
YUNKER & PARK PLC
P.O. Box 21784
Lexington, KY 40522-1784
Phone: 859-255-0629
Fax: 859-255-0746

² See also Windstream companies' Initial Position Statement, filed May 27, 2010, in Case No. 2010-00162, p.2 (referring to Case No. 2007-00503 as well):

[N]either case accounts for the significant duplication (if not triplication) of resources needed to meaningfully participate in these cases as well as the FCC's global, comprehensive intrastate access reform initiatives as part of the FCC's National Broadband Plan.

The administrative record in Case No. 2010-00162 has been incorporated into this proceeding. 11/5/10 Order p.9 ¶6.