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June 14, 2010

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PUBLIC SERVICE  
COMMISSION

**VIA COURIER**

Mr. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, KY 40602

Re: AT&T Communications of the South Central States, TCG Ohio, and BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky, Complainants v. Kentucky Rural Incumbent Local Exchange Carriers, Kentucky Competitive Local Exchange Carriers, Windstream West, LLC, Windstream East, LLC, and Cincinnati Bell, Respondents  
PSC 2010-00162

Dear Mr. Derouen:

Enclosed for filing in the above-captioned case are original and five (5) copies of AT&T's Reply Comments in Support of Petition and Complaint Seeking Reduction of Intrastate Switched Access Rates.

Should you have any questions, please let me know.

Sincerely,

  
Mary K. Keyer

Enclosures

cc: Parties on attached Certificate of Service

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

<b>In the Matter of:</b>	)	
	)	
<b>AT&amp;T COMMUNICATIONS OF THE</b>	)	
<b>SOUTH CENTRAL STATES, TCG OHIO,</b>	)	
<b>AND BELL SOUTH TELECOMMUNICATIONS,</b>	)	
<b>INC., d/b/a AT&amp;T KENTUCKY,</b>	)	
	)	
<b>Complainants</b>	)	
	)	
<b>v.</b>	)	<b>Case No.:</b>
	)	<b>2010-00162</b>
<b>KENTUCKY RURAL INCUMBENT LOCAL</b>	)	
<b>EXCHANGE CARRIERS, KENTUCKY</b>	)	
<b>COMPETITIVE LOCAL EXCHANGE</b>	)	
<b>CARRIERS, WINDSTREAM WEST, LLC,</b>	)	
<b>WINDSTREAM EAST, LLC, AND</b>	)	
<b>CINCINNATI BELL</b>	)	
	)	
<b>Respondents</b>	)	

**AT&T’S REPLY COMMENTS IN SUPPORT OF PETITION AND COMPLAINT**  
**SEEKING REDUCTION OF INTRASTATE SWITCHED ACCESS RATES**

AT&T Communications of the South Central States, TCG of Ohio, BellSouth Long Distance Inc. d/b/a AT&T Long Distance Service, and BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (collectively, “AT&T”), respectfully submit their reply comments to the position statements filed by Windstream Kentucky East, LLC and Windstream Kentucky West, LLC (collectively, “Windstream”), the rural incumbent local exchange carriers (“RLECs”),<sup>1</sup> TDS Telecom, and the Competitive Carriers of the South (“CompSouth”)<sup>2</sup>.

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<sup>1</sup> The RLECs participating in the comments filed are Ballard Rural Telephone Cooperative Corporation; Brandenburg Telephone Company, Inc.; Duo County Telephone Cooperative

## INTRODUCTION

For all their talk, the respondents refuse to confront the central problem – that high access charges are hurting all Kentucky consumers. The respondents' in-state switched access charges are well above their interstate access charges, even though there is no dispute that access for intrastate calls is the same function, in all material respects, as access for interstate calls. These high access rates keep in-state long distance prices too high. They create disincentives for carriers to invest in new technologies that Kentucky consumers want. They insulate service providers from market incentives to become more efficient, to reduce their prices, and to innovate. Most troubling of all, the very purpose of these high intrastate access charges is to *overcharge consumers across all of Kentucky* for wireline long distance service just to subsidize artificially low local service prices for the small minority of customers in the respondents' territories. These market distortions and cross subsidy schemes are inconsistent with a fully competitive market and are a bad deal for consumers in every corner of the Commonwealth.

In this case, AT&T proposes a straightforward, win-win step towards fixing this basic inequity. The Commission should reduce the respondent incumbent carriers' intrastate access rates to parity with the rates they already charge for

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Corporation; Foothills Rural Telephone Cooperative; Gearhart Communications Co., Inc.; Highland Telephone Cooperative, Inc.; Logan Telephone Cooperative, Inc.; Mountain Rural Telephone Cooperative, Inc.; North Central Telephone Cooperative Corporation; Peoples Rural Telephone Cooperative; South Central Rural Telephone Cooperative Corporation, Inc.; Thacker-Grigsby Telephone Company, Inc.; and West Kentucky Rural Telephone Cooperative Corporation, Inc.

<sup>2</sup> The CompSouth members participating in the comments filed are Access Point, Inc., Birch Communications, Inc., Cavalier Telephone, Cbeyond Communications, Covad Communications Company, Deltacom, Inc., Level 3 Communications, LLC, tw telecom of ky llc and XO Communications Services, Inc., and Windstream NuVox Communications, Inc.

interstate calls (just as AT&T Kentucky has already done), and give them the opportunity to recover the reduction in access revenues by rebalancing local rates up to a reasonable statewide benchmark, and (where necessary) by obtaining explicit support from a state universal service fund; and where necessary, direct all respondent CLECs to cap their intrastate switched access rates at the corresponding intrastate switched access rates of the ILECs with which they compete.

It is not surprising that the respondents desperately want the Commission *not* to think about their present access charge regime, which is a holdover from the days of monopoly telecommunications markets. As it stands now, respondents not only receive millions of dollars in access subsidies from Kentucky consumers *outside* their territories, they actually get paid to prop up unrealistically low local service rates that hinder local competition *inside* their territories. But this Commission, the Federal Communications Commission (“FCC”), and regulators across the country have long recognized that this monopoly-era regime is unsustainable in today’s competitive market, and squarely at odds with the broader public interest.

For its part, the FCC ordered significant reductions in interstate switched access charges over a decade ago. More than 20 states – with New Jersey being a notable recent example – have followed the FCC’s lead at the state level and implemented some access reform at the intrastate level. And more than 10 years ago this Commission first recognized the need to rationalize in-state access rates in Kentucky as well. In 1998, the Commission concurred with the

FCC's statement that "as competition develops, states may be compelled by market place forces to convert implicit support to explicit, sustainable mechanisms consistent with section 254(f)."<sup>3</sup> The Commission further stated with regard to non-traffic sensitive ("NTS")<sup>4</sup> rate elements that "[e]limination of NTS is a priority and will be considered along with the elimination of other implicit subsidies."<sup>5</sup>

Given that over a decade has passed since this Commission recognized the need for access reform in Kentucky, it is simply mind-boggling that the opponents of such reform would admonish the Commission not to act "in a hasty, expedited manner." RLEC Stmt. at p. 3. Asking the Commission to follow through on reforms that it has promised for over a decade is neither "hasty" nor "expedited."

It is equally disingenuous for Windstream and the RLECs to suggest that the Commission sit on its hands and wait for the FCC to implement reforms for in-state rates that fall within this Commission's jurisdiction. The FCC has talked about global reforms of intercarrier compensation for the past decade, with no concrete results. Even now, there is no assurance that the FCC will act at all, much less anytime soon. Although the recent *National Broadband Plan recommends* that the FCC reduce intrastate switched access rates, the FCC has yet to take any substantive action; in fact, the FCC does not plan to even issue a

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<sup>3</sup> *In re An Inquiry into Universal Service and Funding Issues*, Adm. Case No. 360, Order (May 22, 1998) at 2-3, citing *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order (May 8, 1997) at para. 17.

<sup>4</sup> The NTS rates are based on a fixed revenue requirement that the RLEC is allowed to collect *regardless of the amount of long distance traffic delivered over its network*, so it is not surprising that the RLECs want to delay this proceeding as long as possible.

<sup>5</sup> *Id.* at 35.

notice of *proposed* rulemaking until the fourth quarter of 2010. Moreover, the RLECs' concern (p. 3) that this Commission might reach a "disparate outcome[]" is baseless. All AT&T is asking the Commission to do is to track reforms that the FCC has *already* implemented at the federal level, and that the Commission ordered long ago on the intrastate side for AT&T Kentucky. The recent *National Broadband Plan* – which both Windstream and the RLECs cite – endorses such straightforward reforms.

There is also no basis for the RLECs' attempts to scare the Commission with sky-is-falling threats that access reform might "have a disastrous effect on the RLECs and their rural customers." RLEC Stmt. at p. 3. Again, all AT&T seeks here is the modest step of reducing intrastate switched access rates to parity with interstate rates that have been in effect for interstate calls for years. Over 20 states have taken this approach. The sky has not fallen in any of the jurisdictions that have implemented access reform – and notably, none of the respondents even *claims* that access reform has had any adverse effects in any of those places. The sky will not fall here. Indeed, AT&T's petition openly advocates that incumbent LECs be given the opportunity to recover the reduction in access revenues through rebalancing of local rates (an approach that the *National Broadband Plan* endorses) and (where necessary) universal service support. In all instances, basic local rates will stay at or below a benchmark the Commission deems reasonable.

## DISCUSSION

As demonstrated below, the respondents' initial position statements are baseless. But before proceeding, the Commission should note what these respondents do not say. Not one respondent offers any showing that its current intrastate switched access rates are just or reasonable. Not one respondent even *disputes* that its rates contain massive implicit subsidies. Not one respondent even *denies* any of the substantive allegations of AT&T's petition and complaint, or disputes that access reform is necessary.<sup>6</sup> Instead, Windstream, the RLECs, and CompSouth try (i) to delay reform (even though those reforms have already been delayed by over a decade) or (ii) to distract the Commission with irrelevant sidetracks.

To its credit, TDS is not opposed to rational access reform and does not attempt to interpose procedural obstacles at this time. In Section III, AT&T addresses TDS's suggestion that the Commission address Windstream's rates separately.

### **I. The Commission Should Not Delay Long-Promised And Long-Overdue Reforms.**

Over a decade has passed since the FCC implemented significant switched access reforms for interstate traffic. Over a decade has passed since this Commission reformed AT&T Kentucky's intrastate switched access rates. And over a decade has passed since this Commission pledged similar reforms for other carriers. Yet those reforms have still not occurred. So Windstream, the RLECs, and CompSouth's members have reaped a 10-year windfall of high,

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<sup>6</sup> In fact, the RLECs in their comments state they "are not ultimately opposed to access reform as a general matter." (p. 4)

monopoly-era intrastate switched access rates, knowing all along that the day of reckoning would come. Unsatisfied, these respondents seek still more delay.

Windstream and the RLECs argue mainly that the “FCC has already initiated proceedings that would result in intercarrier compensation reform” and that the Commission should do nothing while it waits for the FCC. RLEC Stmt. at p. 3; *see also* Windstream Stmt. at p. 4. Nonsense. The FCC has been saying it should review intercarrier compensation for a decade, and the long-promised reform has not yet materialized. The FCC opened a rulemaking in 2001, parties provided a decade’s worth of comments to the FCC, and the FCC has not acted on any of them. “Waiting for the FCC” is no better than “waiting for Godot.”

Windstream and the RLECs note that the National Broadband Plan (“NBP”) – a series of “RECOMMENDATIONS” developed by the FCC *staff* – suggests that the FCC should conduct a comprehensive reform of intercarrier compensation. But not one of these “RECOMMENDATIONS” has been adopted or even formally considered by the FCC. The FCC has not even received comments on the staff recommendations, and it is as yet unclear when it will do so. In a proposed schedule, the FCC’s Chairman announced that the NBP process will consist of some **60** separate rulemakings, and that the earliest the FCC will even issue a notice of *proposed* rulemaking on intercarrier compensation reform is in the fourth quarter of 2010.<sup>7</sup> It is entirely disingenuous for the RLECs to suggest (at p. 3) that “the FCC has already initiated proceedings.”

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<sup>7</sup> *Broadband Action Agenda*, available at <http://www.broadband.gov/plan/broadband-action-agenda.html>.



Rather than waiting endlessly for the FCC to act on intrastate matters that unquestionably fall within state authority, over 20 states have confronted the problem of implicit subsidies by requiring carriers to mirror, at the intrastate level, the significant reforms the FCC has already adopted for interstate rates. For example, the New Jersey Board of Public Utilities rejected the same “wait on the FCC” arguments that the respondents advance now, and ordered local exchange carriers to reduce their intrastate switched access rates to “parity” with the corresponding interstate rates:

The Board also HEREBY FINDS that the Board need not . . . wait for federal action from the FCC or from Congress on Intrastate Access Rate issues. As the Board stated in its December 2008 Order, the Board regulates Intrastate Access Rates and it is within the Board’s authority to review the complete record in this proceeding and render its decision.<sup>8</sup>

Not only have more than 20 states implemented some switched access charge reform, but a number of other states have proceedings opened or planned, and none of them has indicated that they will be waiting on the FCC. Indeed, NARUC comments, endorsed by most states, have expressly acknowledged that state regulators, like this Commission, play an important role in implementing reform.

This Commission approved access reforms for AT&T Kentucky in 1999. Nothing in the NBP precludes this Commonwealth from doing the same thing for other LECs now. To the contrary, the NBP (p. 148) *invites* state action when it recommends that “[t]he FCC should also encourage states to complete rebalancing of local rates to offset the impact of lost access revenues.” The NBP

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<sup>8</sup> *In re Board’s Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates*, NJ BPU Docket No. TX08090830, Order, Feb. 1, 2010, p. 27.

also recognizes the *need* for access reform. The NBP frankly acknowledges (p. 142) that “[t]he current ICC [InterCarrier Compensation] system is not sustainable.”

There is also no basis for the RLECs’ unexplained claim (at p. 4) that “AT&T’s plan for Kentucky switched access reform differs markedly from that put forth by the FCC in its *National Broadband Plan*.” For starters, it bears repeating that the FCC has not “put forth” any plan for intrastate reform. The NBP is a series of recommendations by the FCC staff. The FCC has not even asked for comments on those recommendations, let alone considered them.

Moreover, AT&T’s plan for Kentucky switched access reform is simply that the Commission implement reforms that the FCC has *already adopted* for interstate traffic (which is also the very first step recommended by the NBP for intrastate reform) and rebalance local rates (an approach the NBP also endorses). True, the NBP recommends that the FCC go on to implement *further* rate reductions at the state and federal levels, but AT&T would be surprised to see the respondents advocate those reductions, and from AT&T’s perspective the Commission can save those future steps for another day.

## **II. The Commission Should Disregard The Respondents’ Other Diversions.**

As with the “wait for the FCC” arguments discussed above, the remainder of the respondents’ initial position statements consist of a series of irrelevant diversions designed to distract the Commission from reforms it pledged to undertake over a decade ago. None of these sidetracks has any relevance or merit.

1. Consider first the allegation that AT&T's petition did not show a "crisis." Windstream Stmt. at p. 3; RLEC Stmt. at p. 10. For starters, these respondents do not cite any legal requirement that a petition must show a "crisis in the Commonwealth" before the Commission will act, particularly when the petition simply asks the Commission to implement reforms that it promised to undertake years ago.

In any event, these respondents are ignoring the crisis that is presented here. Years ago, the FCC and this Commission *recognized* that the monopoly-era implicit subsidies embedded in switched access rates were unsustainable due to the advent of competition. Experience has shown that this foresight was dead-on correct: the number of competing technologies available for bypassing access charges has increased exponentially, and so has the flight of customers leaving wireline networks. Indeed, across Kentucky, the number of access minutes of use declined more than 21% from 2004 through 2008, as consumers shifted their usage away from traditional long distance calling and to forms of communication not burdened with access subsidies. AT&T Petition, at p. 11 and Chart 1. The RLECs themselves admit (p. 10) that they "are already experiencing a significant loss of annual access lines," yet stubbornly refuse to acknowledge that one of the leading causes of that loss is their own access rates, which lead customers to avoid wireline long-distance calling. None of these respondents argue that access reform is not needed; they just want to delay it as long as they can.

2. AT&T has no complaint about “the wide array of emerging technologies with which AT&T alleges it must now compete.” RLEC Stmt. at p. 5. AT&T is perfectly happy to compete against all comers, and perfectly willing to take its chances in the competitive market. The “real issue” (RLEC Stmt. at p. 5) is that competition today is manifestly unfair – a problem that the respondents do not dispute. AT&T is saddled with the massive burden of high switched access rates, while competing technologies are not. All AT&T asks is for the Commission to lighten the artificial, monopoly-era burden so AT&T can compete on more even terms, and so Kentucky consumers can make a fair choice – based on quality and the real underlying cost, not on artificial subsidies – and obtain the benefits of full and fair competition.

3. The RLECs go nowhere fast in contending that “it was AT&T that elected to enter into an alternative regulation scheme that reduced its intrastate switched access rates to interstate levels.” RLEC Stmt. at p. 4. AT&T Kentucky’s alternative regulation plan and its intrastate switched access rates are not at issue here. This case is about the respondents’ access rates, and whether *those* rates should be reduced – just as this Commission said they should be reduced over a decade ago, and just as many states have done.

4. Windstream and the RLECs complain that this proceeding will somehow strain their supposedly “limited resources.” RLEC Stmt. at p. 3; see *also* Windstream Stmt. at p. 3. Neither respondent presents any financial data to prove that its resources are really limited, or that the cost of this proceeding is really enough to strain them. Filing substantial briefs is hardly the way to prove

that you do not have the resources to handle a proceeding. Anyway, the FCC proceedings on intercarrier compensation will not even begin for months, so there is no “strain” and the respondents should be willing to expedite the proceedings here and use their “limited resources” now before the FCC gets rolling. To the extent there is any overlap in issues, the respondents can file copies of their pleadings here with the FCC, just as Windstream filed in this docket a copy of its pleading from the Verizon case.

Rather than listen to Windstream and the RLECs complain about their “limited resources” – while raking in millions in subsidies borne by consumers across the Commonwealth – the Commission should instead be concerned with the limited resources of Kentucky consumers. Consumers across the Commonwealth have been forced to pay high long-distance prices for years just to subsidize local service in the territories served by respondents. It is high time the Commission give those consumers some relief.

5. It is quite disingenuous for Windstream and the RLECs to complain that AT&T’s Petition did not include a commitment to “pass[] through to end users any expense reductions they may garner through these types of access proceedings.” RLEC Stmt. at p. 3; see *also* Windstream Stmt. at p. 3. These respondents surely know the elementary economic principle that a company will reduce its retail prices if its wholesale prices fall. That principle applies with particular force in the long-distance market, where AT&T and other wireline interexchange carriers face vigorous competition from alternative providers that do not incur access charges in the same way. Windstream and the RLECs also

surely know that a mountain of empirical data confirms that principle and shows that reductions in access charges *have* passed through to end users. Indeed, AT&T will show that, here in Kentucky, its average prices for intrastate long distance services provided by AT&T Communications have fallen over the past several years, even as the RLECs' average per minute access charges have *increased*. The RLECs' discussion of "pass through" is simply an attempt to distract the Commission from the massive subsidies they have extracted from consumers across Kentucky. There is ample "competition to police or control AT&T's market actions." RLEC Stmt. at p. 2.

6. AT&T is simply baffled by CompSouth's suggestion (at p. 1) that AT&T is not "directly interested" in the case. Obviously, AT&T is directly interested in the rates it is forced to pay for access to local networks. Just as obviously, AT&T – as one provider of long-distance service – is "directly interested" in the competitive disadvantage it faces when it has to pay those charges while competing technologies do not. True, high access charges do not harm AT&T alone; they also harm "end-user customers [and] competition in general." CompSouth Stmt. at 1. But that just means the Commission has more reason to act, and act fast, and it is certainly not a reason to ignore the problem the way CompSouth would like it.

7. CompSouth tries to confuse the Commission with a phony numbers game. Indisputably, the access rates charged by CompSouth members for in-state calls are far higher than the rates they charge for interstate calls. Indisputably, CLEC in-state access rates are also far higher than the rates

charged by AT&T Kentucky, the principal incumbent local exchange carrier ("ILEC") against which they compete.<sup>9</sup> (The FCC and many states have "capped" CLEC access rates at the rates charged by the competing ILEC.) But, CompSouth says (at p. 2), its members' rates are lower than the rates charged by the RLECs. The comparison is false for two reasons: (i) the RLECs' intrastate rates are also too high (that is why AT&T's Petition seeks to reform RLEC rates as well as CLEC rates) so pointing a finger their way does no good; and (ii) the CLECs present no evidence that they operate to any material extent in the RLECs' territories, so a comparison to RLEC rates is off base.

### **III. This Commission Should Address Intrastate Switched Access Reform In A Comprehensive Manner.**

Windstream says (at pp. 1-2) the Commission *should* proceed in a consolidated, comprehensive fashion. TDS and the RLECs say the Commission should not, and that the Commission should instead consider Windstream separately. CompSouth thinks (at p. 1) the Commission has to proceed in piecemeal "individual complaint case[s]."

Windstream is right on this one. The Commission has waited long enough to consider access reform, and it should give consumers the benefits of comprehensive reform rather than piecemeal proceedings. The plan proposed by AT&T is a modest one, which fits all carriers. AT&T simply seeks to (1)

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<sup>9</sup> Contrary to CompSouth's assertion (at p. 2), this "diversity of rates" does not result from "market forces." As the FCC and many states have recognized, long-distance carriers have no choice but to pay whatever access rate a CLEC charges, however unreasonable it is. Long-distance carriers do not choose the local carrier at either end of their end users' calls (the end users do that) and cannot block their end users' calls to avoid a CLEC with high access rates. Thus, if anyone here is playing the part of "dominant 'old AT&T'" it is the CLECs, who have a monopoly over access to their end users, and who want to perpetuate a cross-subsidy scheme that dates back to the days of Ma Bell.

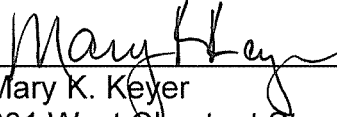
reduce each ILEC's intrastate switched access rates to parity with that carrier's already-in-place interstate rates, while giving each carrier the opportunity to recover access revenue reductions through rebalanced local rates and, where necessary, universal service support, and, (2) where necessary, cap each CLEC's intrastate switched access rates at the corresponding intrastate switched access rates of the ILECs with which they compete. Although the individual access rates and support amounts can (and will) vary to reflect carrier-specific circumstances, the Commission can accommodate those circumstances within a common framework. The RLECs' assertion that their "local rate revenues . . . cannot be raised or lowered without Commission authorization" (p. 9) is immaterial, as AT&T's proposal is designed to be revenue-neutral and the Commission can give whatever authorization it needs to give as part of its order.

### **CONCLUSION**

For the reasons set forth above, the Commission should consolidate this matter with the investigation of Verizon's complaint challenging Windstream's access charges, and establish an appropriate procedural schedule for the consolidated proceeding. A copy of AT&T's amended proposed procedural schedule is attached hereto as Exhibit 1 for the Commission's consideration.



Respectfully submitted,



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## EXHIBIT 1

### AMENDED PROPOSED PROCEDURAL SCHEDULE

July 2, 2010	Commission Issues Procedural Schedule
July 23, 2010	Parties Answer Complaint/Provide Comments
August 10, 2010	AT&T Responds to Comments
August 24, 2010	Workshop for All Interested Parties
September 1, 2010	First Data Requests
September 21, 2010	Responses to Data Requests
October 1, 2010	Simultaneous Prefiled Direct Testimony
October 15, 2010	Second Data Requests
November 1, 2010	Responses to Second Data Requests
November 19, 2010	Simultaneous Prefiled Rebuttal Testimony
Months of December/ January	Potential Hearing Dates
Simultaneous Post-Hearing Briefs: 30 days after receipt of hearing transcript	
Simultaneous Post-Hearing Reply Briefs: 20 days after Post-Hearing Briefs	
Commission Decision: 45 days after Post-Hearing Reply Briefs	

**CERTIFICATE OF SERVICE – PSC 2010-00162**

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof via U.S. Mail, this 14<sup>th</sup> day of June 2010.


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