

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	)	

O R D E R

The Commission hereby finds that an administrative case should be established to examine the switched access rates of Kentucky incumbent and competitive carriers. The purpose of the Commission's examination is, inter alia, to determine if the switched access rates of Kentucky telecommunication carriers include above-cost implicit subsidies. The Commission will determine if these subsidies exist and, if so, whether they qualify as anti-competitive. As part of this examination, the Commission will also determine, in addition to other matters, whether it should develop a regulatory scheme that firmly establishes a methodology for charging intrastate switched access rates.

The Commission acknowledges that intrastate access charges are a significant source of revenue for many carriers, especially for incumbent carriers in areas of the Commonwealth that lack competitive telecommunications options for the retail consumer base in these areas. The Commission finds that a formal record needs to be established in order to address the policy question of whether switched access rates are being used as an implicit subsidy to support the competitive services of some carriers while functioning as a detriment to others and, if so, whether such subsidization is

reasonable. Inter-carrier complaints related to the billing of access charges have increased on the Commission's docket in recent years.<sup>1</sup> Commonly, the complainants to these actions have expressed concern that the high level of certain types of access rates impeded competition because they were not properly tailored to actual cost. In consideration of the facts established in those cases and others, the Commission finds that it has a duty to investigate and address the basis and structure for intrastate access rates and how they are affecting Kentucky's telephone market.<sup>2</sup>

### OVERVIEW OF THE SUBSTANTIVE ISSUES

Intrastate switched access rates are a substantial portion of the larger regime of inter-carrier compensation. Inter-carrier compensation is the global term for the system of payments that carriers make to each other for the costs of originating and terminating telephone calls. Intrastate switched access services are wholesale services provided by local exchange carriers ("LEC") generally to wireline long-distance providers<sup>3</sup> for originating and terminating intrastate long-distance calls. Generally, an IXC has no

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<sup>1</sup> See, e.g., Case No. 2010-00012, *Complaint of Sprint Communications Company L.P. against Bluegrass Telephone Company, Inc. d/b/a Kentucky Telephone Company for the Unlawful Imposition of Access Charges*; Case No. 2008-00135, *Complaint of Sprint Communications Company, LP against Brandenburg Telephone Company and Request for Expedited Relief* (Ky. PSC Dec. 15, 2009); Case No. 2007-00503, *MCI Communications Services, et al. v. Windstream Kentucky West, Inc., et al.*; Case No. 2006-00448, *South Central Telecom, LLC v. BellSouth Telecommunications, Inc.* (Ky. PSC Aug. 2, 2010); and Administrative Case No. 355, *An Inquiry Into Local Competition, Universal Service, and the Non-Traffic Sensitive Access Rate* (Ky. PSC Aug. 26, 1998).

<sup>2</sup> The Commission notes that, within recent years, several other state utility commissions have established investigations into the intrastate switched access rates of incumbent and/or competitive carriers within their states. The states include: Indiana, New Jersey, North Carolina, Ohio, Pennsylvania, and West Virginia.

<sup>3</sup> Long-distance providers are also known as inter-exchange carriers ("IXC").

control over which incumbent LEC (“ILEC”) or competitive LEC (“CLEC”) serves that IXC’s customer, and IXCs are obligated to pay whatever switched access rates ILECs and CLECs choose to assess for those calls. The Commission’s general jurisdiction over intrastate switched access rates is provided under KRS 278.030. This Commission established the ability of incumbents to charge intrastate access rates in 1984.<sup>4</sup> No portion of state or federal law has eliminated the jurisdiction of the Commission over intrastate access rates. The Federal Communications Commission (“FCC”) has exclusive jurisdiction over interstate access charges. In 2006, KRS 278.543 was enacted and placed a cap on the intrastate switched access rates of electing carriers, but preserved the Commission’s authority to investigate and determine if a carrier’s intrastate access charges were fair and reasonable and to order reductions of those rates if necessary.

The existing cost-recovery mechanism was developed for a communications world where single narrowband wireline connections were the dominant form of telecommunications and competition was very limited. That is no longer the case. The legacy narrowband world is quickly being superseded by a very intermodal, competitive, and increasingly Internet-oriented telecommunications environment. The Commission recognizes that the legacy environment has allowed many traditional telephone carriers to maintain their existing networks and extend new portions of their networks (i.e., broadband) to their retail customers because they could depend on consistent revenue from other areas, such as access rates. If, at the end of this investigation, the

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<sup>4</sup> See, e.g., Case No. 8838, *Investigation of Toll and Access Charge Pricing and Toll Settlement Agreements* (Ky. PSC Nov. 5, 1984).

Commission mandates some level of change to this compensation scheme which results in a decrease in the amount of traditional income garnered from those rates, the revenue structure for Kentucky's carriers will be highly impacted. This possibility is not one that the Commission takes lightly, and this issue will be at the forefront of the Commission's consideration during this proceeding.

#### THE FEDERAL COMMUNICATIONS COMMISSION

The FCC has jurisdiction over interstate access charges and the states have jurisdiction over intrastate access charges. As of the date of this Order, the FCC has not preempted state authority over intrastate access charges. However, the staff of the FCC released a National Broadband Plan ("NBP") in March 2010 that makes recommendations for a number of potential regulatory changes for the telecommunications industry, including reform of inter-carrier compensation and switched access charges.<sup>5</sup> With the NBP, the FCC issued a timeline for administrative proceedings<sup>6</sup> to preface the implementation of those recommendations. One of the primary results expected from the NBP is the national transition for carriers from a circuit-switched platform to an Internet Protocol "IP"-based platform for the provision of all telecommunications services. In furtherance of that change, the NBP outlines potential changes to the way telecommunications services are funded, including possibly eliminating a portion of the current federal Universal Service Fund ("USF") and

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<sup>5</sup> *In the Matter of: A National Broadband Plan for Our Future*, GN Docket No. 09-51. This proceeding is progressing simultaneously with a related action by the FCC, *In the Matter of Connect America Fund*, WC Docket No. 10-90.

<sup>6</sup> The proceedings will include issuing notices of proposed rule-making and notices of inquiry.

transitioning to a Connect America Fund, shifting \$15.5 billion over the next ten years from the current USF High Cost program.<sup>7</sup> At this juncture, it is not possible to correctly predict the end results of the NBP or the Connect America Fund. It is unknown exactly how inter-carrier compensation will be changed, when the changes will begin, and whether those changes will be solely for interstate charges or whether the authority of state public utility commissions to render decisions on intrastate charges will be federally preempted.

Regardless of the FCC's current proceedings, the Commission has a duty to the carriers and telephone end-users in Kentucky to undertake an adequate review of access rate compensation models and methodologies. Moreover, in the NBP, the FCC specifically encouraged state commissions to move forward in completing a "rebalanc[ing] of local rates to offset the impact of lost access revenues . . . as doing so would encourage carriers and states to 'rebalance' rates to move away from artificially low \$8 to \$12 residential rates that represent old implicit subsidies to levels that are more consistent with costs."<sup>8</sup> The Commission will use this administrative proceeding to investigate access charge reform within Kentucky and will use it as a formal method of

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<sup>7</sup> The FCC has previously attempted to address inter-carrier compensation. See 2001 Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, FCC 01-132, CC Docket 01-92 (rel. April 21, 2001); 2005 Further Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, FCC 05-33, CC Docket 01-02 (rel. March 3, 2005). (The FCC stated that the purpose of that proceeding was ultimately to arrive at a policy or mechanism to replace the myriad of existing inter-carrier compensation regimes with a unified regime designed for a market characterized by increasingly facilities-based competition and new technologies. However, no final Order has been issued by the FCC in this proceeding.)

<sup>8</sup> *Connecting America: The National Broadband Plan*, 2010 WL 972375 (March 16, 2010) at 135.

monitoring, analyzing, and applying changes implemented by the FCC through the NBP and the Connect America Fund.

### MAJOR POLICY ISSUES TO BE ADDRESSED

At this point, the major issues the Commission expects to consider during this proceeding are:

1. Should Kentucky transition to a cost-based system for access rates?
  - a. If yes, then how should carriers be allowed to recover the revenue lost by the transition to a cost-based system (i.e., increasing local rates, establishment of a universal service or rate re-balancing fund, etc.)?
  - b. How much time should carriers be given to transition to a new cost-based system and adapt to the new methods for revenue recovery?
  - c. What are the competitive advantages or disadvantages of having one revenue recovery method versus another?
2. Would competition suffer greater harm by having higher access rates, higher local exchange rates, or having other higher intrastate rates?
3. Federal regulation currently requires CLECs to mirror the interstate access rates of ILECs, unless specific cost-justification is provided for having higher interstate rates. Should Kentucky implement this same policy for the intrastate rates for CLECs?
4. Should the Commission establish a goal of ultimately moving to a zero rate for access charges?
  - a. How much time should carriers be given to transition to a new cost-based system and adapt to the new methods for revenue recovery?

This list is not exhaustive in identifying the issues the Commission expects to examine during this proceeding. Rather, these issues frame the policy considerations that will be at the forefront of the Commission's review of intrastate access rates.

#### PARTIES TO THE PROCEEDING

Upon its own motion, the Commission finds that all ILECs should be made parties to this proceeding. Incumbents are indispensable to this proceeding and the analysis of the pertinent issues. As of the date of this Order, there are 188 CLECs providing intrastate telephone service in Kentucky. However, the Commission estimates that a large number of these CLECs are resellers and do not charge access rates that will be affected by this proceeding. The Commission also estimates that a number of other CLECs may charge access rates, but those rates are not a significant source of income for them and, therefore, those carriers could readily adapt to a decision by the Commission to change the way access rates are structured in Kentucky without a dramatic change to their intrastate revenue structures. The Commission finds that all Kentucky CLECs should be served with notice of this Order and should have 30 days from the date of the Order to move for intervention. All CLECs that collect intrastate access charges will be obligated to adhere to the final decisions of the Commission as to the access rate structure and collection methodologies rendered in this proceeding.

#### MOTIONS FOR FULL INTERVENTION IN THE PROCEEDING

Pursuant to 807 KAR 5:001, Section 3(8), all others persons or entities who believe they have a special interest in this proceeding which will not otherwise be adequately represented and who are likely to present issues or develop facts that will

assist the Commission in fully considering this matter without unduly complicating or disrupting the proceedings may move for full intervention. The Commission will only consider motions for intervention that are filed within 30 days of the date of this Order.

#### PROCEDURAL SCHEDULE

An initial procedural schedule is included in Appendix A to this Order. The initial schedule includes an opportunity for comments from carriers and members of the public. Additionally, as an initial matter, all ILECs and participating CLECs are required to file their current intrastate access rate tariffs into the record of this proceeding.<sup>9</sup> The items included in the procedural schedule will be expanded by subsequent Orders.

#### ELECTRONIC FILING PROCEDURES

Upon its own motion, the Commission hereby finds that it should allow a deviation from 807 KAR 5:001 and will institute the use of electronic filing procedures and permit the service of documents upon parties by electronic means only. The Commission finds that electronic filing procedures will assist in a thorough and efficient review of all pleadings filed in this matter. The electronic filing procedures are provided in Appendix B to this Order.

IT IS HEREBY ORDERED that:

1. All Kentucky ILECs are made parties to this matter.
2. The Executive Director shall serve a copy of this Order, by first-class mail, upon all ILECs registered with the Commission.

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<sup>9</sup> The Commission recognizes that the tariffs are separately filed with the Commission by each carrier; however, to facilitate access and review of those documents during the proceeding, the Commission will require the parties to file them into the record.



3. The Executive Director shall serve a copy of this Order, by first-class mail, upon all CLECs registered with the Commission.

4. All participants to this proceeding shall follow the procedural schedule attached as Appendix A to this Order.

5. All participants to this proceeding shall follow the electronic registration and electronic filing procedures referenced within Appendix B to this Order. Should any conflict exist between the procedures set forth in 807 KAR 5:001 and those established in this Order, the parties shall comply with the latter.

6. The administrative records in Cases No. 2007-00503 and No. 2010-00162 are incorporated by reference into this proceeding.

7. The Executive Director shall serve a copy of this Order upon the following by electronic means:

- a. Kentucky Attorney General through his Office of Utility and Rate Intervention;
- b. Kentucky Telephone Association;
- c. Communication Workers of America–Kentucky Office;
- d. Kentucky Secretary of State;
- e. Competitive Carriers of the South, Inc.; and
- f. Kentucky Chamber of Commerce.

By the Commission

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NOV - 5 2010  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2010-00398 DATED **NOV - 5 2010**

PROCEDURAL SCHEDULE

Motions to Intervene shall be filed  
no later than .....30 days from the date of this Order

Public Comments shall be filed no  
later than .....45 days from the date of this Order

Each ILEC and each participating  
CLEC shall file their current intrastate  
access rate tariff(s).....45 days from the date of this Order

## APPENDIX B

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2010-00398 DATED NOV - 5 2010

#### ELECTRONIC FILING PROCEDURES

1. Unless the Commission requires otherwise, all parties to this proceeding shall, when submitting any pleading or other document in this proceeding, file with the Commission an original and one copy in paper medium and one copy in electronic medium.

2. All parties shall submit the electronic copy of any pleading or document to the Commission by following the instructions located on the Commission's Electronic Case Filings page at <http://www.psc.ky.gov/efs/efsmain.aspx>. All parties shall fully comply with the instructions for electronic transmission and uploading set forth at <http://www.psc.ky.gov/efs/efsmain.htm>.

3. All electronic filings shall be made in the following manner:

a. All pleadings, documents, and exhibits shall be submitted in Portable Document Format ("PDF") and be capable of viewing with Adobe Acrobat Reader. All electronic submissions in PDF format shall be search-capable and shall be optimized for viewing over the Internet.

b. Any submitted documents that are scanned shall be scanned at a resolution of 300 dots per inch "dpi."

c. The electronic version of each document shall be bookmarked to distinguish sections of the document.

d. All electronic submissions shall include an introductory file in PDF format that is named "Cover Letter" and that contains a general description of the filing, a list of all materials not included in the electronic filing, and a statement attesting that the electronically filed documents are a true representation of the original documents. The "Cover Letter" file and any other document that normally contains a signature shall include a signature in electronic format. The electronic version of the cover letter accompanying the paper filing may be substituted for a general description.

e. If the electronic submission does not include all documents contained in the paper version (e.g., confidential materials or materials that are too large or bulky to transfer by electronic medium), then the absence of these documents shall be noted in the "Cover Letter" document.

f. No electronic transmission or uploading session shall exceed 20 files or a total size of 100 megabytes. No individual file shall exceed 25 megabytes.

g. When submitting documents for which confidential treatment is sought, a party shall:

(1) Submit an original, a paper copy, and an electronic copy of a petition requesting confidential treatment and setting forth the grounds pursuant to KRS 61.870 upon which the material should be classified as confidential. Also submit a redacted copy of the material with those portions for which confidentiality is sought.

(2) Submit a paper copy of the material in question which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which, unless deleted, would disclose confidential material and a CD-ROM containing an electronic version of such material with highlighting.

4. When filing any document with the Commission, any party participating in this case through electronic means shall certify that:

a. The electronic version of the filing is a true and accurate copy of the document(s) filed in paper medium.

b. The electronic version of the filing has been transmitted to the Commission.

c. The party has, by electronic mail, notified the Commission and the other parties participating in this case by electronic means that the electronic version of the filing has been transmitted to the Commission.

d. The party has sent, in paper medium, a copy of its filing to all parties whom the Commission has excused from participation by electronic means.

5. The Commission's Executive Director shall make all electronic filings available at [http://www.psc.ky.gov/efs/EFS\\_Search.aspx](http://www.psc.ky.gov/efs/EFS_Search.aspx).

6. Upon a party's receipt of an electronic mail message from the Commission indicating that an electronic submission has been made to the Commission, it shall be the receiving party's responsibility to access the Commission's electronic file depository at [http://psc.ky.gov/efs/EFS\\_Search.aspx](http://psc.ky.gov/efs/EFS_Search.aspx) and download a copy of the submission.

7. a. Within ten days of the date of this Order, any Kentucky ILEC that does not have an active Electronic Filing Account with the Commission shall establish an account at <http://www.psc.ky.gov/Account/Register>.

b. Each party granted leave to intervene in this proceeding after the date of this Order who does not have an active Electronic Filing Account with the

Commission shall, within five days of entry of the Order granting intervention, establish an account at <http://www.psc.ky.gov/Account/Register>.

c. Persons or entities solely interested in monitoring this proceeding may sign-up for electronic notification of filings and Orders at <http://www.psc.ky.gov/efs/EmailSignUp.aspx>.

8. The instructions for electronic filing with the Commission are set forth at [http://psc.ky.gov/agencies/psc/casefile/filing\\_instructions\\_web.pdf](http://psc.ky.gov/agencies/psc/casefile/filing_instructions_web.pdf). To the extent that any portion of these instructions conflicts with the provisions of this Order, the provisions of the Order shall control.

9. A document shall be considered timely filed with the Commission if it has been successfully transmitted in electronic medium to the Commission within the time allowed for filing. The original document in paper medium shall be filed at the Commission's offices on the next business day following the electronic filing. Parties shall attach to the top of such submission a paper copy of the electronic mail message from the Commission confirming transmission and receipt of its electronic submission.

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