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David Danner
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: Docket No. UT-100562

Enclosed for filing are reply comments from AT&T Communications of the Pacific Northwest, Inc., New Cingular Wireless PCS, LLC, and TCG Seattle (collectively "AT&T") in the above mentioned matter. Please let me know should you have any questions.

Sincerely,

David Collier
Area Manager - Regulatory

BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

	)	DOCKET UT-100562
Policy Statement to Review State Universal Service Policies	)	
	)	
	)	**AT&T**

REPLY COMMENTS OF AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., NEW CINGULAR WIRELESS PCS, LLC, AND TCG SEATTLE

Submitted this 15th day of July, 2010

Cindy Manheim by Dac with permission

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I. ACCESS REFORM IS LONG OVERDUE

Virtually all commenters in this proceeding agree that intrastate switched access charges should be reduced.[1] Comcast points out that excessive intrastate switched access rates contain a subsidy which "creates distortions in the market by forcing one company's customers to pay for another company's costs."[2] Sprint explains that high intrastate switched access rates, "inflate the price of telecommunications service, impede full and fair competition, create costly non-productive market distortions and endless litigation, and create disincentives for incumbents to deploy and market broadband."[3] In short, high intrastate access charges overcharge consumers all across Washington for wireline long distance service just to subsidize artificially low local service prices. These market distortions and cross subsidy schemes are inconsistent with a fully competitive market and are a bad deal for consumers in the state.

In addition, the current intrastate switched access regime is unsustainable in this era of competition. WITA provides persuasive evidence in this regard. WECA access minutes have decreased 42% from 2004 to 2009.[4] Further, disparate rates for various intercarrier compensation mechanisms are putting further strain on the switched access regime, "arbitrage and access avoidance have placed intercarrier compensation revenues at risk."[5]

Even Public Counsel admits that there "are issues to be addressed in the access charge arena…"[6] The only party not advocating for changes with intrastate switched access is Integra.[7] It is not

[1] Washington Independent Telecommunications Association ("WITA"), page 10 ("…it is WITA's position that in the context of creation of a state universal service fund, the Commission should address intercarrier compensation issues that are within its jurisdiction, which in this case means intrastate switched access rates. Failure to address the complete package opens the door to further arbitrage."); Comcast, page 1 ("The UTC needs to address excessive intrastate switched access rates to ensure that competitive markets function efficiently and incentives for private investment are promoted."); Sprint, page 2 ("The consumer harms caused by high access rates are widely understood."); Verizon, page 2 ("…regulators often set the access charges of local exchange carriers ("LECs") at artificially high levels to keep basic exchange service rates for residential customers low. This approach is no longer sustainable in a competitive environment."); and, AT&T, page 2 ("The status quo of high intrastate switched access rates which historically have helped to keep basic local service rates artificially low in Washington cannot be sustained and, if not addressed, could hinder universal service and the widespread availability of communications service in Washington.")

[2] Comcast, response to WUTC Question 2.

[3] Sprint, page 2.

[4] WITA comments, Table 3, page 13.

[5] WITA comments, page 12.

[6] Public Counsel, page 2.

surprising that Integra would take this position as it likely wants to retain the high access charge revenues that it is receiving for as long as possible. Notably, Integra has not even attempted in its comments to argue that its current intrastate switched access rates are just and reasonable, even though its intrastate switched access rates are far above its interstate rates, which were capped by the Federal Communications Commission ("FCC").

Integra attempts to create delay by arguing that Washington should wait to see what happens at the FCC before doing anything further.[8] As demonstrated by other commenters and AT&T, Washington must commence intrastate switched access reform without any further delay. The FCC has ruminated about global reforms of intercarrier compensation (ICC) for almost a decade. In 2001 the FCC opened a rulemaking on ICC reform on which it has not yet acted. Even now, there is no assurance that the FCC will act at all, much less anytime soon. Although the recent National Broadband Plan (NBP)[9] recommends that the FCC reduce intrastate switched access rates, the NBP is only a series of recommendations by staff. The FCC's Chairman has announced that the recommendations in the NBP will be considered in 60 separate rulemakings. The notice of proposed rulemaking on ICC reform will not even be issued until at least fourth quarter 2010.[10] As action by the FCC is unlikely to occur anytime soon, Washington should address access reform today.

One of the reasons that Integra cites for waiting to see what the FCC does, is that "[t]he FCC has indicated that it plans to take jurisdiction away from states with regard to intrastate access."[11] Again the NBP only contains recommendations and this is a topic that parties will likely comment on at the FCC. This Commission has previously submitted comments at the FCC advocating that the FCC should not take jurisdiction away from state commissions in the area of ICC. Specifically, in response to an Order on Remand and Report and Order and Further Notice of Proposed Rulemaking ("FNPRM") issued by the FCC in November 5, 2008[12] that addressed

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[7] Integra, response to WUTC question 2 ("Whether achieving Universal Service requires access reform can only be ascertained once Universal Service goals are defined and the extent to which these goals need funding is determined.")

[8] Integra comments, page 1 ("Given jurisdictional changes proposed at the federal level, Integra believes that intrastate access reform should not be mandated on all local exchange carriers ("LECs") within the state. Instead, resources are best spent in determining the outcome of the disputed federal issues first, and then, if necessary, determining what additional action, if any, should be taken at the state level")(footnote omitted).

[9] *Connecting America: The National Broadband Plan*, issued March 16, 2010.

[10] Broadband Action Agenda, available at http://www.broadband.gov/plan/broadband-action-agenda.html.

[11] Integra comments in response to WUTC Question 4 (citations omitted).

[12] *High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109; *Universal Service Contribution Methodology*, WC Docket No. 06-122; *Numbering Resource Optimization*, CC Docket No. 99-200; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Intercarrier Compensation for ISP-Bound Traffic*, CC

ICC issues, the Commission submitted comments expressing its concern about the "potential adverse effect of the FNPRM on Washington's rural business and residential consumers." The Commission further argued that "[d]espite the [FCC's] efforts to effectively 'federalize' all aspects of intercarrier compensation, the fact remains that state commissions are closest to consumers and the specific aspects of the provision of telecommunications service in their markets..."[13] The Commission, therefore, has positioned itself as a leader in the area of intrastate access reform and should move forward on access reform in the state.

Further, there is no need for Washington to wait for FCC action as the intrastate switched access reform proposed by AT&T simply tracks the reforms that the FCC has already implemented for interstate switched access rates.[14] This is endorsed by the NBP which invites states to take straightforward action, "[t]he FCC should also encourage states to complete the rebalancing of local rates to offset the impact of lost access revenues."[15] The Commission should develop a comprehensive plan to address intrastate switched access reform, including a legislative proposal for a transitional state universal service fund.

Whatever the merit the access regime once may have held in the era of monopoly telecommunications, it has long since outlived that usefulness in today's radically changed market. Perversely, this mechanism which was once conceived as a means of protecting consumers instead harms them by forcing consumers across Washington to pay more for their telecommunications services. In sum, high switched access rates create real problems for Washingtonians. The resolution of these problems can only occur if high intrastate switched access rates of all carriers in Washington are reduced. Comprehensive reform will conserve Commission resources instead of forcing the Commission to deal with access reform in an ad hoc manner through individual complaint or rate cases.[16]

II. CONSUMERS WILL BENEFIT FROM ACCESS REFORM

a. Public Counsel's claim regarding consumer savings is misguided

Public Counsel's claim that consumers saved between $370 million and $1.48 billion because a universal service fund was not established 10 years ago is incorrect and demonstrates a lack of understanding of the benefits of access reform. As AT&T explained

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Docket No. 99-68; *IP-Enabled Services*, WC Docket No. 04-36, FCC 08-262 (rel. November 5, 2008). ("*November 2008 FNPRM*")

[13]WUTC Comments on *November 2008 FNPRM*, page 4.

[14] See AT&T comments, page 13.

[15] NBP page 148.

[16] See Qwest rate case, UT-950200, AT&T v. Verizon complaint UT-020406, and Verizon v. Embarq complaint UT-081393.

in its comments, switched access charges are a principal component of the cost of providing wireline long-distance service.[17] High access charges keep the price for in-state wireline long-distance calls higher than they should be. As a result, consumers who place traditional long-distance calls from their home or office phone are paying much more than they should for long distance service.

If the estimated amount for a Washington Universal Service Fund ("WUSF") was correct ten years ago, that does not mean that customers *saved* $370 million to $1.48 billion because the fund was not established; it means that for the last ten years, certain customers, including wireline long distance customers, have been forced to *pay* between $370 million and $1.48 billion in hidden subsidies. The absence of an explicit fund does not make any of the high-cost areas go away; it only hides those costs by shifting the burden.

Dr. Debra J. Aron, a telecommunications economist, has shown that reducing access charge costs to the long distance provider reduces long-distance prices to consumers.

> Specifically, statistical analysis of AT&T's data shows that on average in states that have undergone access reform, approximately 100% of the decreased access expenses are passed through to consumers. This means that on average, if a reform state's intrastate access cost is lower by one cent per toll minute, its retail intrastate long distances prices are lower by one cent per toll minute.[18]

Hence, consumers would experience significant savings through lower long-distance rates if intrastate access charges were reduced. Reducing intrastate switched access rates, rebalancing retail prices, and establishing an explicit WUSF to recover revenues that are not recovered by rate rebalancing means that subsidies that have been provided to local exchange providers for service to certain customers in high cost areas will instead be borne in a more equitable, technology neutral fashion through an explicit funding mechanism assessed on all telecommunications customers in the state. Moreover, to the extent that local rates are rebalanced to drive below-cost retail local exchange prices closer to cost, some of the subsidy will be eliminated entirely as, consistent with sound economic principles of efficiency and equity, customers will be assessed more of the costs associated with the service they receive.

The purpose of the proposed USF fund ten years ago was to facilitate a move away from the implicit cross-subsidies embedded in retail prices and switched access rates.[19] Had the Commission established a USF at that time, and proceeded to lower access rates then, as it had indicated would be the natural follow-on to establishing a USF, long distance consumers

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[17] AT&T comments, page 12 ("Intrastate access fees are the single most important component of the overall cost of providing in-state long distance service, representing as much as 75 percent of the retail price that consumers pay for in-state long distance service.") See also Dr. Debra Aron's paper, "*The Consumer Benefit of Regulatory Access Reform in Washington*" attached to AT&T's opening comments.

[18] Dr. Debra Aron's paper, "*The Consumer Benefit of Regulatory Access Reform in Washington*" attached to AT&T's opening comments.

[19] "Proposed Rulemaking for Universal Telecommunications Service 98/11/23 UT-980311(r)," Washington Utilities and Transportation Commission, November 23, 1998 (Agenda Date), Docket UT-980311(r), Section D.

would have *saved* millions of dollars over that time period, and the market would have been permitted to function in a more competitively neutral fashion.

b. Access reform will encourage broadband deployment and investment in the state

Last year the Governor's Broadband Advisory Council released a report, *Enhancing Broadband in Washington: Effective Means to Improve Connectivity and Awareness* ("Broadband Report").[20] The Broadband Report succinctly sets forth the goal for Washington state and broadband:

> Washington's primary goal should be to support proposals that effectively and efficiently extend broadband access to every Washington resident and facilitate broadband adoption in ways that stimulate its economy and create sustainable jobs.[21]

Indeed the Broadband Report found that it is "essential to our state's continued economic development to continue to nurture and preserve the vitality of its technology-based businesses by supporting deployment, adoption, and use of broadband throughout our state."[22]

As recognized by Sprint, high intrastate access rates create "disincentives for incumbents to deploy and market broadband."[23] A paper published by the Phoenix Center For Advanced Legal & Economic Public Policy Studies found that high switched access rates discourage, rather than foster, broadband investment. "[H]igh non-uniform intercarrier compensation rates can deter broadband deployment when broadband represents a threat to existing revenue streams drawn from high termination rates."[24]

ILECs may be reluctant to invest in broadband or encourage its use if it provides a means to avoid the traditional wireline long distance calling which is the mechanism that currently generates the access revenues for the LEC which are well above the cost of providing such service. In addition, for those companies whose access revenues is a substantial share of overall revenue, as switched access volumes and revenues decrease such companies will have less to reinvest in their networks and emerging technologies, which may leave rural communities

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[20] Enhancing Broadband in Washington: Effective Means to Improve Connectivity and Awareness, released July 17, 2009; http://broadband.dis.wa.gov/docs/Broadband%20Report_FINAL071709.pdf

[21] Broadband Report, page 4.

[22] Broadband Report, page 24..

[23] Sprint comments, page 2.

[24] "Do High Call Termination Rates Deter Broadband Deployment?" Phoenix Center Policy Bulletin No. 22, pg. 9 (Oct. 2008).

without the benefits of advanced technologies. For all of these reasons, Washingtonians and the Washington economy will benefit from intrastate access reform.

III. A TRANSITIONAL STATE UNIVERSAL SERVICE FUND IS REQUIRED YET IT SHOULD BE KEPT AS SMALL AS POSSIBLE

a. A Local Retail Rate Benchmark Should be Established and Local Exchange Carriers Should be Allowed to Rebalance Local Rates

WITA argues that a WUSF is needed for a number of reasons and is needed now.[25] In contrast, a number of commenters argue that there should not be a WUSF and/or that such fund should be as small as possible. AT&T agrees with WITA that there should be a WUSF as such a fund will ease the transition away from the implicit subsidies embedded in intrastate switched access rates which subsidize artificially low local retail rates. Nevertheless, AT&T also believes that a state universal service fund should be as small as possible.[26] As such, the access reform plan that AT&T outlined in its opening comments provides a rational basis for moving forward.

In order to minimize the size of the WUSF, ILECs should be allowed to "rebalance" their local rates up to a reasonable benchmark and only recover the remaining access revenue reductions from the WUSF. This will reduce the size of a WUSF as all of the access reductions will not come from the WUSF, but instead will also come from increases to residential retail rates which have remained artificially low in Washington. At the same time, the ILEC would not be required to raise its rates to the benchmark. Instead, as proposed by WITA and AT&T, if the company wants to keep its local retail rate below the benchmark, the difference will be imputed to the company and would be subtracted from the amount the company would otherwise receive under the WUSF."[27]

Rebalancing of local rates as a way to make up for the lost subsidies from decreases in access revenues has also been recognized as an important component of the NBP. The NBP "encourage[s] states to complete rebalancing of local rates to offset the impact of lost access revenues...[as] [d]oing 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."[28]

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[25] WITA comments at page 11.

[26] AT&T comments, page 8.

[27] WITA comments, page 22 and AT&T, page 7.

[28] NBP page 142 (citation omitted).

There is a very wide range in the residential retail rates for ILECs in Washington. According to Table 6 in WITA's comments there are 5 WITA members that have rates in the $8 to $12 range; 9 WITA members plus Qwest have rates between $12 and $16.00; and, 6 WITA members plus Verizon that have rates over $16 (3 WITA companies are over $20).[29]

Establishing a benchmark mechanism would benefit Washington consumers in several ways. First, an ILEC that reduces its intrastate switched access rates is not forced to raise its local rate to make up reduced access revenues. Rather, it may set its local rate where it deems best in response to market forces. However, the calculation of that ILEC's distribution from the WUSF is determined ***as if*** it had raised its local rates to the benchmark. Accordingly, competitive market forces constrain how much actual local rate increase customers would actually see. Second, the benchmark would have the effect of bringing widely disparate local rates closer together, such that ILECs with extremely low local rates are brought closer to cost as the local rate is increased and ILECs with higher local rates (i.e., those above the benchmark) are subsidizing to a lesser extent those consumers with low local rates.

Third, the benchmark works like a dial giving the Commission the ability to balance competing public policy objectives. Setting the benchmark higher reduces the size of the WUSF and it gives consumers better signals about the cost of their local service; setting the benchmark lower would make the size of the fund larger. Moreover the benchmark may be adjusted over time, e.g., increased by the rate of inflation to reduce WUSF funding over time.

In its comments, WITA proposed a $16 benchmark to provide an estimate of the size of the WUSF, $27.5 million.[30] If a slightly higher benchmark was instituted, such as $19, AT&T believes that the WUSF size would decrease by almost 1/3; a benchmark of $20 would cut the size of the fund in half. A benchmark of $19 or $20 would not be unreasonable, as the current rate cap for New York is $23,[31] while Pennsylvania has an $18 cap which it may increase at the conclusion of an ongoing investigation.[32] The fact that there are a number of companies in Washington with retail rates over $16 demonstrates that consumers are willing to pay over $16 a month for local phone service. As such, AT&T believes that in order to keep the fund size as small as possible it would be advantageous to set a benchmark that is higher than $16.

The use of a benchmark with a transition period will not only address some commenters concerns about a state universal service fund, but it will also address Public Counsel's concern

[29] WITA comment, page 18; Qwest's residential retail rate is $13.50.

[30] "The estimated size of the WUSF after completion of the transition contemplated in these [WITA's] Comments is 27.5 million dollars. This estimate does not include funding more than one carrier per area." WITA comments, page 22.

[31] NY PSC Case 05-C-0616, Order issued April 11, 2006.

[32] Access Charge Investigation per Global Order of September 30, 1999, Docket Nos. M-00021596, etc. (Opinion and Order entered July 15, 2003)(available on PA Commission website).

that "access charge rebalancing should be done on a gradual basis, not in a 'flash cut' or extreme fashion, which can result in dramatic increases in local rates.[33] WITA proposes a goal of a three year transition period for local rates with up to a $2.00 per year per line increase.[34] AT&T supports the use of a transition period. ILECs would recover the balance of unrecovered revenue from a WUSF which would decline over time as local rates are increased each year.

Public Counsel seems to argue that access reform should not occur because it will lead to higher local rates for some consumers. But Washington should not be deterred from such reforms because some customers may see local rate increases. Those local rate increases would occur only because the rates have been kept at artificially low levels by subsidies that are extracted from customers across Washington. Local rate increases will move rates closer to cost – a natural aspect of a well-functioning market that leads to full and robust competition, again to the ultimate benefit of consumers. Yet at the same time utilizing a state universal service fund will ease the transition of local rate increases.

b. Only ILECs with Carrier of Last Resort Obligations ("COLR") Should be Allowed to Withdraw from the State USF

In giving Washington consumers' relief from high access charges, universal service support for the ILEC is a sensible transition tool. Traditionally ILECs were forced to charge artificially low rates for local service and forced to be ready, willing and able to serve all customers in their service areas COLR obligations. Thus, ILECs charged high switched access rates to subsidize local service at artificially low prices and to promote universal service in rural area. As WITA and others have persuasively demonstrated these subsidies are not sustainable and can no longer be relied upon to support an ILEC's provision of universal service in Washington. As AT&T detailed in its comments, the state can continue to ensure that the universal service objectives are met by reducing intrastate switched access rates to the rates and rate structure charged by the ILEC for its interstate service and allowing the ILEC to recover the reductions in access revenue through (i) increases in local rates, up to a reasonable benchmark, coupled with (ii) explicit support through WUSF. Limiting support from the WUSF to ILECs with COLR obligations will further ensure that the size of the fund is as small as possible.

c. Contributions to State Fund

While a number of commenters state that they oppose a state universal service fund, these same commenters provide interesting alternatives for funding a state universal service fund, making it appear that these commenters realize that a state universal service fund is a necessity. Sprint and Comcast both suggest that a state universal service fund should be funded from general tax revenues.[35] WITA suggests that a state universal service fund should be funded based on

[33] Public Counsel comments, page 2.

[34] WITA comments, page 22.

[35] Comcast comments in response to WUTC question 10; Sprint comments in response to WUTC question 10, page 6.

working telephone numbers or possibly a connection based system.[36] While AT&T recommends that Washington establish a state universal service fund with the contribution methodology mirroring that of the federal universal service fund, AT&T is not opposed to investigating the funding methodologies suggested by other commenters or other alternatives such as a state subscriber line charge.

IV. CONCLUSION

Access reform is long overdue in the state of Washington. Washingtonians and the state economy will benefit from access reform and will ensure that the facilities are available in Washington for a broadband future. Intrastate switched access rates should be reduced to interstate levels immediately, because the old access charge regime simply cannot and should not be sustained, and because consumers should not be made to wait for the benefits of those reductions any longer. At the same time, the offsetting local price increases can be implemented gradually – using the WUSF as a transitional tool – so that consumers do not see sharp increases in local service rates, while incumbent LECs still have a fair opportunity to make up for the reduction in access revenue during the transition.

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[36] WITA comments in response to WUTC question 10, page 21.