STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Geneseo Telephone Company,	)	
Cambridge Telephone Company, and	)	
Henry County Telephone Company	)	Docket No. 11-0210
	)	
Petition for Universal Service.	)	
	)	CONSOLIDATED
Illinois Independent Telephone	)	
Association	)	
	)	
Petition to update the Section 13-301(1)(d)	)	Docket No. 11-0211
Illinois Universal Service Fund and to	)	
Implement Intrastate Switched Access	)	
Charge reform as described herein and for	)	
other relief.	)	

CABLE TELEVISION & COMMUNICATIONS ASSOCIATION
<u>OF ILLINOIS REPLY BRIEF</u>

Michael W. Ward
John F. Ward, Jr.
Ward & Ward, P.C.
One Rotary Center
1560 Sherman Avenue
Suite 805
Evanston, IL 60201
224-420-9766
mwward@dnsys.com
jward@levelerllc.com

Filed: October 5, 2012

TABLE OF CONTENTS

		Page
I.	**The IITA/AT&T Illinois Intrastate Originating Access Proposal Is Contrary To The Access Transformation Principles Of The FCC Plan.**	**4**
II.	**The IITA/AT&T Illinois Intrastate Originating Access Proposal Is Contrary To The Access Transformation Structure Of The Illinois Public Utilities Act.**	**10**
III.	**Conclusion.**	**13**

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Geneseo Telephone Company,	)	
Cambridge Telephone Company, and	)	
Henry County Telephone Company	)	Docket No. 11-0210
	)	
Petition for Universal Service.	)	
	)	CONSOLIDATED
Illinois Independent Telephone	)	
Association	)	
	)	
Petition to update the Section 13-301(1)(d)	)	Docket No. 11-0211
Illinois Universal Service Fund and to	)	
Implement Intrastate Switched Access	)	
Charge reform as described herein and for	)	
other relief.	)	

CABLE TELEVISION & COMMUNICATIONS ASSOCIATION
OF ILLINOIS REPLY BRIEF

Now comes the Cable Television and Communications Association of Illinois, on behalf of its members and affiliates that provide competitive local exchange services in Illinois (CT&C)[1], pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (Commission) and the schedule set by the Administrative Law Judge and respectfully files the Cable Television & Communications Association of Illinois Reply Brief.

CT&C intervened in this proceeding to address the agreement between the carriers to lower the intrastate originating access charges by the small incumbent local exchange carriers (ILECs) to Illinois Bell Telephone Company (AT&T Illinois) and other carriers and to raise the

[1] The position submitted by CT&C does not include the CT&C members that are also members or affiliates of members of the Illinois Independent Telephone Association. These CT&C members include Moultrie Telecommunications, Inc., Madison Communications, Inc., Adams Telecom, Inc., HomeTel. Entertainment, Inc., and Cass Cable TV, Inc./Greene County Partners, Inc.

Illinois universal service fund (IUSF) charges to consumers throughout Illinois by a similar amount. In the initial briefs, all but AT&T Illinois simply rely on the agreement between the carriers to shift these costs to the consumers.[2] They offer no public policy basis in support the arrangement. As the primary beneficiary of the reduced charges, AT&T Illinois argues that a shifting of the costs from AT&T Illinois to the consumers, through the IUSF, is authorized under the Illinois Public Utilities Act (Act) and is not preempted by the Federal Communications Commission (FCC) in the *USF/ICC Transformation Order*.[3] Initial Brief of AT&T Illinois, pp. 1 – 11.

CT&C respectfully submits that AT&T Illinois both (1) seeks to avoid the FCC's transformation plan's explicit nationwide treatment of intrastate originating access as to the small rate-of-return ILECs and (2) mischaracterizes the Act. AT&T Illinois undertakes to reduce its costs and increase its profits through a shifting of the revenue burden. Meanwhile the ILECs do not object, provided they receive their full measure of access replacement revenue from the consumers, even from non-customers. Yet this is the antithesis of the transformation plan established by the FCC and is not the structure found in the Act.

It is the access revenue recovery proposal that runs afoul of public policy and of the access charge transformation structures found in both the *USF/ICC Transformation Order* and the Act. CT&C does not object to the Illinois Independent Telephone Association (IITA) four

[2] Illinois Independent Telephone Association Brief In Support, pp. 10 – 13; Alhambra-Grantfork Telephone Company, et al. Brief, p. 2; Cass Telephone Company, et al., Brief In Support, p.1; Initial Brief of Frontier North, Inc., et al., pp. 3, 5; Initial Brief of the Staff of the Illinois Commerce Commission, pp. 4, 7.

[3] *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform — Mobility Fund,* WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337,CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011)(*USF/ICC Transformation Order*);*pets. for review pending sub nom. In re: FCC,* No. 11-9900 (10th Cir. filed Dec. 8, 2011).

point proposal for modifications to the IUSF,[4] with the exception to the second sentence of the second point regarding intrastate originating access charges, which should be stricken, as follows:

> 2. The Interim Fund should be based upon an updated "need showing" using the Schedule 1.01 methodology used by the Commission in establishing the original IUSF effective October 1, 2001. ~~That analysis and showing will also incorporate the affect of all companies seeking and qualifying for the Interim Fund reducing originating intrastate switched access charges to "mirror" originating interstate switched access charges contemporaneous with the effective date of the Interim Fund~~.

With this change, the IITA members would receive their basic IUSF relief without needing to have additional increases for reduced access revenues, consumers throughout Illinois would avoid an almost 30% increase in their IUSF charges, or $2,881,511, and Illinois' access charge reformation would comport with both that found in the *USF/ICC Transformation Order* and in the Act. IITA members' originating access revenues would not be impacted and consumers would not be burdened with an unwarranted increase in the IUSF.

I. The IITA/AT&T Illinois Intrastate Originating Access Proposal Is Contrary To The Access Transformation Principles Of The FCC Plan.

As explained in the CT&C Initial Brief, the *USF/ICC Transformation Order* has a comprehensive, national framework for the transformation of intercarrier compensation that explicitly addresses the treatment of intrastate originating access for rate-of-return carriers[5], including the IITA members. This involves a careful balancing of policy goals, equities, and budgetary constraints. In its initial brief, AT&T Illinois ignores the entire FCC analysis of its

[4] Illinois Independent Telephone Association Brief In Support, pp. 10 – 11.
[5] References hereafter to originating access refer to intrastate originating access for rate-of-return ILECs, unless otherwise indicated.

treatment of originating access. It would have the Commission assume that the FCC failed to address originating access. But a review of the *USF/ICC Transformation Order* reveals just the opposite.

The FCC reached a very particular determination for the treatment of originating access during the intercarrier compensation reform transition. This analysis coordinated with the entire access transformation plan and balanced various competing interests, not the least of which are advancing the fundamental goals of universal service and intercarrier compensation.[6] The problem for the IITA/AT&T Illinois originating access proposal is that the FCC determined that originating access should be handled in just the opposite way as AT&T Illinois is proposing in the instant proceeding.

All intercarrier compensation is subjected to the FCC's jurisdiction. The *USF/ICC Transformation Order* addressed interstate and intrastate access, originating and terminating, for ILECs and CLECs[7], both price cap and rate of return. *USF/ICC Transformation Order*, ¶¶ 736 – 805. The FCC found that the intercarrier compensation regime and universal service are intimately intertwined and require a comprehensive, balanced approach for a successful transformation. *Id.*, ¶ 810. This uniform nationwide approach necessitates transitioning interstate and intrastate terminating access before transitioning interstate and intrastate originating access, as terminating access involves the most acute intercarrier compensation

[6] *In the Matter of Connect America Fund: A National Broadband Plan for Our Future Establishing Just and Reasonable Rates for Local Exchange Carriers High-Cost Universal Service Support Developing a Unified Intercarrier Compensation Regime Federal-State Joint Board on Universal Service Lifeline and Link-Up Universal Service Reform - Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, FCC 12-47, Second Order on Reconsideration, 27 FCC Rcd 4648 (2012), ¶ 1 (*USF/ICC Second Order on Reconsideration*).

[7] CLECs are competitive local exchange carriers, in contrast to the ILECs.

problems.[8] To maintain balance, the reduction in terminating rates is to transition over a period of six to nine years, specifically to avoid any flash cut of rates. *USF/ICC Transformation Order*, ¶¶ 801 - 802. Meanwhile, the FCC determined that interstate originating access would be capped, and that intrastate originating access for rate-of-return carriers should remain uncapped. Otherwise, to reduce originating access at the same time that it is reducing terminating access would overburden the universal service fund. The FCC transformation plan committed to controlling the size of the universal service funding and to minimizing the burden on consumers. *Id.*, ¶ 805. It further rejected the concept that access charge reform should be revenue neutral. *Id.*, ¶¶ 38, 848, 924.

The FCC's approach adopted positions promoted by AT&T at the FCC, but which AT&T Illinois has abandoned in the current proposal. At the FCC, AT&T proposed that interstate and intrastate originating access be retained, and not reduced, on the interim basis to keep the revenue replacement fund to a more manageable size. CT&C Cross Ex. 1.0 (Bax), pp. 22, 26 citing the ABC Plan at 11. The FCC noted this in its decision to not reduce intrastate originating access as part of its balanced transition plan. *USF/ICC Transformation Order*, ¶¶ 817 – 818, fn. 1543 (citing the ABC Plan at 11) and ¶ 1301, fn. 2352 (AT&T urging the FCC not to order reductions in originating access); see also *USF/ICC Transformation Order*, ¶ 805. AT&T now attempts to distance itself from the position advocated at the FCC.

[8] AT&T Illinois claims that the Commission needs to address issues of arbitrage from excessive access rates and that there is no reasonable basis for concluding that there are more implicit subsidies in terminating access charges than in originating access charges. Initial Brief of AT&T Illinois, pp. 6 – 8. But, the FCC found otherwise. It determined that the FCC's transition plan deals with the arbitrage and rate reforms in a balanced approach. *USF/ICC Transformation Order*, ¶¶ 651, 739, 800. CT&C witness Richard Wolfe agrees with the FCC. CT&C Ex. 1.0, pp. 4 – 6. Even if originating and terminating access rates are similar, the nature of the traffic results in terminating access having a far greater impact. The Commission need only examine the instant record for evidence of this. Of the IITA's First Amended Petition's request for an increase of $10,461,934 to offset the proposed reduction in access revenues, $7,580,423, or more than 72%, was for terminating access while $2,881,511 was for originating access. Cf. IITA First Amended Petition, ¶ 24, requesting an IUSF increase for all reduced access revenues with IITA Ex. 3.3 (Schoonmaker) identifying only the originating access revenues.

AT&T claims that its position is more clearly represented in an earlier filing submitted as AT&T Illinois Ex. 2.4 (LJB Redirect). Initial Brief of AT&T Illinois, p. 9. But a review of that filing reveals even more AT&T positions consistent with the FCC's transition plan but antithetical to AT&T Illinois' position in the instant proceeding.

AT&T Illinois asks the Commission to increase the IUSF contribution by an amount equal to the reduction in originating access revenues to make the change revenue neutral. Initial Brief of AT&T Illinois, pp. 1, 6; IITA First Amended Petition, ¶¶ 22 - 24. But, before the FCC, AT&T argued that the revenue replacement funding should not be designed to be replace all lost access revenues. AT&T Illinois Ex. 2.4 (LJB Redirect), p. 32. In turn, the FCC rejected the principle that access reform should be revenue neutral. *USF/ICC Transformation Order*, ¶¶ 38, 848, 924. AT&T Illinois' proposal to the Commission stands in conflict with both the FCC's plan and AT&T's FCC position.

In yet another conflict, the current request proposes to flash cut the originating access on the first day of the calendar month after entry of the order in this docket, with an accompanying increase the IUSF by a similar amount. Initial Brief of AT&T Illinois, p. 6; IITA First Amended Petition, ¶ 25. However, in the AT&T FCC comments, cited in the Initial Brief of AT&T Illinois at 9, AT&T advised the FCC that access reduction should be phased in over four years. AT&T stated that "(c)omprehensive reform of the intercarrier compensation regime cannot happen overnight" but must have a "clear glide path" for an "orderly transition". AT&T Illinois Ex. 2.4 (LJB Redirect), p. 30. The FCC agreed that it is important for access reform to avoid a flash cut. Instead, the FCC designed an access transition glide path of six years for price cap ILECs and nine years for rate-of-return ILECs. *USF/ICC Transformation Order*, ¶¶ 739, 800 – 804. Yet, AT&T Illinois would ask the Commission to also violate this principle, with the instant flash cut,

and without presenting any public policy support to overcome its own advisory to the FCC, and the FCC's holdings. It is clear why AT&T Illinois fails to address the FCC's comprehensive access transformation plan.

AT&T Illinois cites to an FCC footnote indicating that states are not expressly preempted from reducing rates on a faster transition. Initial Brief of AT&T Illinois, p. 7. There the FCC was addressing a pending Michigan petition, finding that the FCC's comprehensive intercarrier compensation plan had addressed many of the access issues in the petition, rendering it moot. Like the *USF/ICC Transformation Order*, the Michigan proceeding was requiring a phase down of access charges in transitional steps and did not shift additional revenue recovery on the consumers. MCL 484.2310(2)&(6). The FCC found that a state that has already scheduled rate reduction transitions may proceed to do so, even if the schedule is faster than that set by the FCC. *USF/ICC Transformation Order*, ¶ 816, fn. 1542. Unlike the Michigan situation, the IITA/AT&T Illinois proposal has no transition schedule nor does it protect from overburdening the consumer as provided by the FCC.

More pertinent to this docket is the FCC's specific directive about what states may do regarding the intrastate originating access for rate-of-return carriers.

> We do not cap intrastate originating access for rate-of-return carriers in this Order. We note that states remain free to do so, provided states support any recovery that may be necessary, and such a result would promote the goals of comprehensive reform adopted today.

USF/ICC Transformation Order, ¶ 813, fn. 1529. As to the originating access of IITA members, the FCC gave the state authority to *cap* the rates *provided* it would promote the goals of the comprehensive reform adopted by the FCC. As previously noted, this includes ensuring that it does not add to the universal service burden on consumers. *USF/ICC Transformation Order*, ¶¶ 10, 739, 805.

To accomplish intercarrier compensation reform and to maintain universal service, the FCC decided not to reduce, or even cap, intrastate originating access for rate-of-return carriers. Based on the AT&T Illinois position taken with regard to another issue in this proceeding, this FCC determination supports the conclusion that this Commission should take a similar approach.

In response to the request of Geneseo Telephone Company, Cambridge Telephone Company, and Henry County Telephone Company (GCHC) to include access to broadband as a supported service under the IUSF, AT&T Illinois states that the FCC decided to not add access to broadband as a supported service for the federal USF, even though a state may include it in the state USF. AT&T Illinois argues that this explicit FCC determination supports the conclusion that the Commission should do likewise and refuse to include access to broadband as a supported service under the IUSF. Initial Brief of AT&T Illinois, pp. 11- 12. See also Illinois Independent Telephone Association Brief In Support, p. 30, for the same point.

This argument carries equal force against the IITA/AT&T Illinois proposal to flash cut originating access and to increase the IUSF by a like amount to achieve revenue neutrality. The FCC *USF/ICC Transformation Order* explicitly decided against this approach, which supports the conclusion that this Commission should not do so either.

The IITA/AT&T Illinois proposal contradicts the comprehensive intercarrier compensation and universal service plan adopted by the FCC. Not only has the FCC addressed the treatment of originating access for rate-of-return carriers at this phase of transition, but the IITA/AT&T Illinois proposal contains numerous elements specifically rejected by the FCC for achieving access transformation while supporting universal service. Similarly, the Commission should reject the proposal to flash cut intrastate originating access rates and to shift the revenue burden onto consumers through a 30% increase in the IUSF.

II. The IITA/AT&T Illinois Intrastate Originating Access Proposal Is Contrary To The Access Transformation Structure Of The Illinois Public Utilities Act.

The provisions of the Illinois Public Utilities Act clearly express the General Assembly's determination to *not* require the intrastate access rates of the members of the IITA to mirror the interstate access rates. 220 ILCS 5/13-900.2(c). Despite this explicit directive, AT&T Illinois attempts to argue that for this Commission to now require IITA members to mirror interstate access rates is "consistent" with the contrary language of the Act. AT&T Illinois then proceeds to claim that support for its proposal may be found in Section 13-301(b)(2) that provides for the Commission to identify *all* implicit subsidies contained in the rates or charges of an ILEC. 220 ILCS 5/13-301(b)(2). But no effort was even attempted in this record to identify *all* of the implicit subsidies of the IITA members' rates and charges, much less satisfy the statute. Instead, AT&T Illinois picked one service for which it sought to reduce the rates for the services that it purchases and volunteered consumers to assume the cost. Neither section supports the access mirroring facet of the IITA/AT&T Illinois proposal. The proposal should be denied.

In 2010 the General Assembly addressed access reform and required most telecommunications carriers to transition their intrastate rates to mirror their interstate rates over a period of years. Electing providers, such as AT&T Illinois, were required to transition their rates over a three year period. 220 ILCS 5/13-506.2(g)(1). Other carriers were required to make the transition over a two year period. 220 ILCS 5/13-900.2(b). Of particular note is the General Assembly's decision that ILECS of fewer than 35,000 access lines, i.e. the IITA members, would not be required to mirror interstate access rates at all. 220 ILCS 5/13-900.2(c). Similar to the FCC, the Illinois General Assembly recognized the need of the smaller ILECs to maintain this

revenue stream to support their operations without further burdening the requirements of the IUSF.

Sections 13-506.2 and 13-900.2 further reflect the General Assembly's determination that access reform, when required, should be transitioned over a period of years, and not to flash cut the rates as included in the IITA/AT&T Illinois proposal. Once again, the Act reflects the same policy determinations found in the *USF/ICC Transformation Order* to provide a transition glide path for access transformation to avoid the disruption and the burden of sudden changes.

Section 13-900.2 also does not provide for an alternative fund to compensate the carriers for reducing their access charges or for them to remain revenue neutral. Nor does Section 13-301 provide for revenue neutrality for access charge reductions. In its direct testimony, Staff recognizes that "…it seems very clear to me that simple replacement of any revenues associated with [intrastate access] subsidies…is not contemplated by this section of the statute." ICC Staff Ex. 1.0, p. 10 (Hoagg). Much like the FCC, the Illinois statutes either exempted the carriers from mirroring interstate rates or enabled the carriers to absorb the changes to their operations over time.

Not only do these similarities reflect the consistency between the Illinois legislature's and the FCC's approaches, but they also highlight the conflict between the IITA/AT&T Illinois proposal and the legislature's established policy.

AT&T Illinois' attempts to claim that the General Assembly's express determination to *not* have the IITA members intrastate rates mirror their interstate rates is consistent with the IITA/AT&T Illinois proposal to mirror those rates, and to impose an increased burden on consumers, who pay for the IUSF. Initial Brief of AT&T Illinois, p. 7. As shown, this argument is unfounded and unsupported by the Act.

Nor does AT&T Illinois' reference to Section 13-301(2)(b) support the IITA/AT&T Illinois proposal. See Initial Brief of AT&T Illinois, p. 9. That statutory subsection deals with an effort by the Commission to identify *all* implicit subsidies in an ILEC's rates and charges, including (but not limited to) interexchange access charges, to determine how to make them explicit. However, no effort was made in this proceeding to identify all of the subsidies in the rates and charges of the various IITA members' telecommunications services. AT&T Illinois was only concerned with reducing the rates for originating access service, to mirror the interstate rates, and the parties pursued no other effort to identify all of the implicit subsidies in the various telecom services of the ILECs per Section 13-301(2)(b). But when addressing only the issue of access charges, the specific approach taken by the General Assembly is found in Section 13-900.2, which excludes the IITA members from being required to mirror interstate rates.

Another disagreement between Section 13-301(2) and the IITA/AT&T Illinois proposal is found in Section 13-301(2)(c). In establishing the fund, the statute prohibits the reduction of rates in effect at the time the fund is created. This is to prevent artificially increasing the revenue replacement needs of the IUSF and unnecessarily increasing the burden on the consumers who must pay for the fund. Although the IITA/AT&T Illinois proposal does not actually reduce the established affordable price set by the Commission, voluntarily reducing the originating access charges, after both the General Assembly and the FCC have decided that the small ILECs should not mirror interstate access rates, has the same effect of arbitrarily and capriciously raising the revenue requirements sourced from the IUSF and raising the burden on the consumers. It is no more legitimate a public policy to do indirectly that which the statute prohibits doing directly.

Contrary to the claims of AT&T Illinois, the IITA/AT&T Illinois proposal to flash cut originating access rates, and to impose the entire burden of recovering the reduced revenues on

consumers through a 30% increase in the IUSF, is inconsistent with the access reform provisions of the Act and the design of the IUSF. The IITA/AT&T Illinois proposal to increase the IUSF to recover any revenue reductions from a decrease in originating access should be denied.

III. Conclusion.

The FCC is currently addressing a nationwide long term transition and revenue recovery plan for intrastate and interstate originating access, one that balances the FCC's policies for intercarrier compensation and universal service. Once the order is issued it will be binding on the states. It makes no sense at this time for Illinois to initiate a random change in originating access, one that is in conflict with both the FCC and the General Assembly's policies, when the Commission will only be required to rescind any changes to institute the long term transition plan to be issued by the FCC. Change is both difficult and confusing to consumers. To amend the IUSF for the inclusion of recovering reduced originating access revenues, only to rescind and redesign the IUSF pursuant to the FCC long term order, creates additional burdens and confusion for the consumer and invites criticism of the Commission and the regulatory process.

The Commission should follow the approach taken by the regulatory commissions in Pennsylvania and North Carolina and defer any action on originating access until the FCC issues its upcoming long term reformation plan. See CT&C Initial Brief, pp. 18 – 19.

Wherefore, for the above stated reasons, the Cable Television and Communications Association of Illinois respectfully submits that the Illinois Commerce Commission should deny the proposal by the Illinois Independent Telecommunications Association and Illinois Bell Telephone Company to the extent that it requests an increase to the Illinois universal service

fund to recover revenues resulting from a decrease in intrastate originating access rates, a proposed amount of $2,881,511. Correspondingly, IITA members would not be required to reduce their intrastate originating access rates to receive their other requested Illinois universal service fund relief and, therefore, would not be harmed by this partial denial of their Petition. The Commission should defer any further review of the reformation of intrastate originating access rates until the Federal Communications Commission issues its order in response to the current Notice of Proposed Rulemaking on intrastate originating access reform.

The Cable Television and Communications Association of Illinois takes no position on the Illinois Independent Telephone Association request for an increase in the Illinois universal service fund regarding basic elements.

Dated: October 5, 2012

Respectfully,

Cable Television and Communications
Association of Illinois

/s/

Michael W. Ward
John F. Ward, Jr.
Ward & Ward, P.C.
One Rotary Center
1560 Sherman Avenue
Suite 805
Evanston, IL 60201
224-420-9766
mwward@dnsys.com
jward@levelerllc.com