



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE MOTION BY JOINT)
MOVANTS AT&T COMMUNICATIONS OF NEW)
JERSEY, RATE COUNSEL AND SPRINT REQUESTING) ORDER
THE BOARD SUSPEND AND INVESTIGATE)
CENTURYLINK'S PHASE II ACCESS RATE) DOCKET NO. TO11020064

(SERVICE LIST ATTACHED)

BY THE BOARD¹:

By letters dated January 20 and 21, 2011, counsel for AT&T Communications of NJ, LP and its regulated affiliates ("AT&T"), on its own behalf and on behalf of the Division of Rate Counsel ("Rate Counsel") and Sprint Communications Company, L.P. ("Sprint") (collectively, "Joint Movants") submitted a letter motion to the New Jersey Board of Public Utilities ("Board") requesting that the Board suspend and investigate the proposed Phase II tariff rates for its intrastate access charges² filed by the United Telephone Company of New Jersey, Inc. d/b/a CenturyLink ("CenturyLink")³ pursuant to the Board's February 1, 2010 Order I/M/O the Board's Investigation and Review of Local Exchange Carrier Access Rates, Docket No. TX08090830 ("Access Order")⁴. The Joint Movants allege that CenturyLink failed to comply with the requirements of the Access Order, and requested that the Board adopt what the Joint Movants maintain are appropriately – calculated rates as CenturyLink's interim Phase II access rates, subject to true up at the conclusion of the Board's investigation. This Order memorializes the Board's determination with regard to the motion and the investigation.

Procedural History

As previously stated, on February 1, 2010, the Board issued the Access Order which effectuates a transition of the pricing of intrastate switched access rates for Incumbent Local Exchange Carriers ("ILEC") operating in the State to interstate rates and rate structures. The Access Order set a 36 month transition period with specific targets spread over four phases to achieve "parity" between intrastate and interstate access rates, with mirrored interstate switched

¹ Commissioner Nicholas Asselta did not participate in this matter.

² Switched access rates are the compensation that a telecommunications carrier with the final connection to the customer charges another carrier for use of the local telephone network to originate or complete toll calls. The access rates that are the subject of this Order are intercarrier, wholesale rates for calls within New Jersey.

³ Formerly known as "Embarq."

⁴ The Access Order is currently pending on appeal before the Appellate Division.

access rates and rate structures occurring at the conclusion of the transition period, February 1, 2013.

Finding that a reduction in Access Rates will benefit customers, the Access Order set specific rate reductions for CenturyLink, as well as for the other ILECs. Access Order at 27-30. For Phase I, CenturyLink was directed to eliminate its carrier common line ("CCL") charge effective February 21, 2010. *Id.* at 29. For Phase II, CenturyLink was directed to reduce its access rates "by one-third of the difference between its Intrastate Access Rates and its Interstate Access Rates." *Id.* at 30. On December 16, 2010, CenturyLink filed its notice of Phase II composite rates. On December 23, 2010, the Joint Movants filed a letter objecting to CenturyLink's December 16, 2010 notice filing for failing to accurately implement the terms of the Access Order.

On January 21, 2011, in compliance with the Access Order, CenturyLink filed its proposed tariff revisions implementing Phase II of the Access Order ("Phase II Tariff"). The Phase II Tariff became effective February 1, 2011. Thereafter, on January 21, 2011 AT&T moved to protest the Phase II Tariff. Sprint and Rate Counsel concurred in those pleadings. While the parties endeavored to settle the matter informally and engaged in several rounds of settlement discussions, they could not reach a resolution.

On February 17, 2011, a telephonic prehearing conference was held. The parties agreed that the proceeding would be held on the papers submitted according to an agreed upon schedule. The scope of the proceeding was limited to the following issues:

1. Interpretation of the Access Order;
2. What rates should apply and why;
3. The impact of the Phase II Tariff; and
4. The impact on the CLECs' tariffs.

On March 3, 2011, CenturyLink and AT&T filed Initial Testimony in accordance with the established procedural schedule. On March 15, 2011, CenturyLink and AT&T filed Reply Testimony. Sprint and Rate Counsel filed letters concurring with AT&T's Initial and Reply Testimonies. Briefs were filed on April 5, 2011.

Summary of the Positions of the Parties

AT&T/Joint Movants

In its brief AT&T argues that the Access Order's Phase II instruction to CenturyLink is explicit and to the point: CenturyLink shall reduce its intrastate switched access rates by one-third of the difference between its Intrastate Access Rates and its Interstate Access Rates.

The correct method for CenturyLink to calculate its Phase II switching rates according to AT&T is to:

- 1) Subtract the interstate rate from the intrastate rate to obtain the difference;
- 2) Multiply the difference by one-third, to identify the amount by which the intrastate rate must be decreased; and
- 3) Subtract that product (one-third of the difference in each rate) from the current intrastate rates to derive the compliant Phase II rate. AT&T Brief at 8.

According to the Joint Movants, this is the appropriate process needed to comply with the Access Order. Thus, CenturyLink is simply wrong in claiming that this process involves "unnecessarily complicated estimates," especially for LS2, which is the only element which remains contested.

AT&T admits that CenturyLink did properly reduce its intrastate LS1 rate by one-third of the difference between its interstate and intrastate rates, which demonstrates that it knows how to implement the Access Order's requirement. However, the dollar amount related to LS1 usage is negligible, only about \$1 in revenue per year. In contrast, carriers use LS2 on virtually all switched access calls, with hundreds of millions of minutes of annual intrastate usage. But unlike its Phase II rate for the rarely-used LS1 element, CenturyLink did not reduce its intrastate LS2 rate by one-third of the difference between its interstate and intrastate rates. Id. at 9.

AT&T's witnesses described the steps they believe the Access Order required, and that CenturyLink failed to implement the proper rate for the LS2 rate element. CenturyLink's interstate LS2 rate is 0.3892 cents per minute, and its Phase 1 intrastate LS2 rate was 1.5731 cents per minute. AT&T contends that CenturyLink's Phase II intrastate rate for LS2 should have been reduced by one-third of the difference between those rates - or 0.3946 cents - to 1.1785 cents per minute. However, CenturyLink's January 20, 2011 filed Phase II intrastate LS2 rate is 1.3581 cents per minute. According to AT&T, the methodology used by CenturyLink results in a reduction of only 18% of the difference between CenturyLink's interstate and Phase I intrastate access rate - not the full one-third required by the Access Order. Id. at 9.

AT&T contends that CenturyLink's only basis for its inconsistent treatment of the identically structured local switching rate elements is its continued claim that the Access Order means something other than what it says, *i.e.*, that it is permitted to derive its Phase II rates by applying a revenue-based "composite" methodology rather than the simple rate-based methodology described above, and then distribute the results of the "composite" methodology to individual rate elements as it sees fit. Id. at 10.

AT&T maintains that the Access Order references ILEC "composite" rates for only one purpose - to establish a cap on the intrastate switched access rates that CLECs may charge in ILEC territories. Neither the word nor the concept of "composite" rates appears in the Access Order in any other context. Furthermore, the Order specifically notes that because "the individual ILEC intrastate tariff and rate structures are currently not the same, each step of the four-step phase-in will necessarily differ by carrier." Therefore, AT&T maintains that it cannot be presumed that the Order means anything other than what it says with regard to each individual ILEC, including CenturyLink. Indeed, even CenturyLink acknowledges that "[no] one size fits all approach was envisioned by the order." Yet CenturyLink's entire argument requires the Board to read into the CenturyLink-specific Phase II directive a word (and concept) that it clearly did not include. AT&T suggests that CenturyLink's witness Mr. Harper takes the position that a "literal application" of the Board's specific Phase II instruction to CenturyLink is "wrong." The Board's Order, AT&T argues, is explicit and should be followed as intended, meaning that *all* of CenturyLink's intrastate rates - and not just those CenturyLink chose in its discretion - were to be reduced by the full amount prescribed in the Access Order. Id. at 10.

AT&T further contends that similarly, Mr. Harper is misguided in his understanding that the Access Order should not "be interpreted to preclude the use of a composite rate methodology for implementing CenturyLink's Phase II reductions." This argument fails in the face of the Access Order's express recognition and CenturyLink's own acknowledgement that the Order gives specific and discrete directions to each individual ILEC on how to implement its Phase II

obligations. AT&T strenuously argues the Access Order prescribes exactly what each ILEC must do to comply; it does not discuss everything that each ILEC may not do in fulfilling its obligations. *Id.* at 11.

According to AT&T, CenturyLink ignores the fact that "composite" rates are irrelevant to its access customers. The facts as AT&T represents establish that CenturyLink does not tariff and does not charge a "composite" rate to anyone. Rather, CenturyLink assesses charges for individual rate elements, including the LS2 element. *Id.* at 12.

AT&T argues that the differences in the Access Order's Phase II instructions to CenturyLink and Verizon further undermine CenturyLink's argument. The Board ordered CenturyLink to reduce its intrastate switched access rates by one-third of the difference between its intrastate and interstate rates. Verizon, in contrast, was directed to reduce its Market Share Line Charge rate "by an amount equivalent to one-third of the then existing remaining difference between total intrastate switched access revenues and the amount that would be generated if Verizon's intrastate switched access rates were set at its interstate rates." AT&T highlights this point stating that it is clear that when the Board wanted an ILEC to base its rate reductions upon revenue-based calculations, it provided language to that effect. In furtherance of its contention AT&T, states the Board clearly did not use the term "revenues" in instructing CenturyLink on how to determine its Phase II access reductions. *Id.* at 12.

AT&T further argued that CenturyLink's "composite" analysis, including CenturyLink's unilateral decisions as to how to "spread" the resulting revenue reduction among individual rate elements, is entirely revenue-based and has no foundation at all in the Access Order's text. AT&T claims its disciplined application of one-third of the intrastate/interstate rate differential by rate element at each phase can easily be verified and replicated; the same cannot be said for CenturyLink's arbitrary rate reductions.

AT&T rejects CenturyLink's "composite" revenue-based analysis as being far from the simple and direct element-by-element analysis of actual rates the Access Order required CenturyLink to perform. Rather, AT&T characterizes the process as being complex and convoluted producing distorted results that fail to achieve the rates articulated in the Board's Access Order *i.e.*, lower access reductions for the heavily used LS2 rate element. AT&T explains that when CenturyLink took understated revenue reductions and arbitrarily assigned them across rate elements of its own choosing, the results were skewed in CenturyLink's favor.

The record evidence, according to AT&T, shows that CenturyLink's "composite" methodology is internally, and fatally flawed. *Id.* at 13. The "composites" CenturyLink purports to be comparing are themselves not directly comparable. Even if the elements in each of the composites were more directly comparable, however, the differences in traffic or usage patterns between interstate and intrastate jurisdictions further undermine CenturyLink's methodology, argues AT&T. As the record shows, the traffic or usage patterns for its interstate services in New Jersey differ substantially from the usage patterns of CenturyLink's intrastate services. For example, CenturyLink books nearly twice as many interstate tandem switching minutes per end office switching minute as it books in the intrastate jurisdiction. (AT&T Panel Reply Testimony, page 9, n. 8) Thus, even if CenturyLink's interstate and intrastate tandem and local switching access rates were identical, CenturyLink's "composite" interstate switched access rate would be higher than its "composite" intrastate rate *solely* because of the differences in the *composition* of the two composites – and *not* because of any differences in the rates. AT&T Brief at 15.

AT&T further states that the Access Order requires that at the end of the four-step phase-down, actual intrastate and interstate rates – and not composite rates – must be the same. Applying the same logic to each step of the phase-down means that CenturyLink must remove, at this step, one-third of the difference (and at the next step, one-half of the then remaining difference) between its *actual* intrastate and interstate switched access rates which will assure that CenturyLink reaches rate parity at Phase IV. In contrast, CenturyLink's proposal to remove one-third of the difference between "composite" rates based on differing inter- and intrastate switched access usage patterns will not achieve the Board's objectives and, could enable CenturyLink to retain more intrastate switched access revenue than the Board directed. Id. at 17.

AT&T contends that CenturyLink not only failed to fully reduce its LS2 local switching element to meet the Access Order's requirements, it reduced another element too much. CenturyLink's arbitrary spreading of the revenue reduction it calculated led it to reduce its Phase II rate for the Information Surcharge from 0.0502 cents all the way to zero, a greater reduction than required by the Access Order. In order to be fair and consistent across all rate elements, the Joint Movants recommend that CenturyLink be permitted to institute a charge for this element during Phase II and Phase III. AT&T argues that because there is no similar rate element in CenturyLink's interstate tariff, the interstate rate for this element is effectively zero. Thus, CenturyLink should have reduced its intrastate rate element by one-third of the difference between its then existing rate and zero. This means that the proper Phase II rate for the Information Surcharge is two-thirds of 0.0502 cents or 0.0335 cents. As AT&T describes, allowing CenturyLink to re-institute the slight undercharge on the Information Surcharge will not nearly offset the much larger overcharge CenturyLink seeks to impose for the LS2 rate element. Id. at 19.

Finally, AT&T requests that the Board accelerate the Access Order requirement for CenturyLink that New Jersey ILECs mirror their intrastate and interstate access rate structures, including the structure of their transport rate elements, no later than Phase IV. AT&T, in its Motion seeks that the Board require CenturyLink to comply with the restructuring requirement immediately given what AT&T sees as CenturyLink's restructuring delays. According to AT&T, the only question outstanding is the timing the restructuring take place since CenturyLink effectively has conceded that its failure to restructure its intrastate transport rates precludes it from fully complying with the Access Order, without engaging in its "composite methodology". Id. at 20—21.

AT&T concludes that the Board should reject CenturyLink's "composite" rate methodology and direct CenturyLink to file a Phase II LS2 rate of 1.1785 cents per minute; refund, with interest, any amounts collected in excess of the above rate; and revise its composite per minute rate applicable to CLECs to 2.235 cents per minute. AT&T seeks that the Board permit CenturyLink to file a Phase II rate of 0.0335 cents for the Information Surcharge, and require CenturyLink to file by July 31, 2011 a revenue neutral intrastate tariff that mirrors CenturyLink's interstate rate structure. Id. at 21.

CenturyLink

CenturyLink maintains that its Phase II Tariff implements precisely what the Access Order required – a fair and orderly transition to CenturyLink's interstate switched access rates and rate structures. CenturyLink stands by the composite rate methodology, claiming the Phase II Tariff developed a common platform to determine the required revenue reduction, and applied the identified reduction evenly to CenturyLink's switched access rate elements. The switched

access rate reductions, as set forth in Phase II Tariff, achieve a one-third reduction to CenturyLink's composite switched access rates and begin to implement the transition to CenturyLink's interstate switched access rates and rate structures. Thus, the Phase II Tariff fully complies with the Access Order and accordingly, CenturyLink believes it has met its burden of proof.

CenturyLink argues that the Access Order required each ILEC in New Jersey to transition to its interstate switched access rates and rate structures. Indeed, the Access Order recognized that the "individual ILEC intrastate tariff and rate structures are currently not the same" and thus "each step of the four-step phase-in will necessarily differ by carrier." Clearly, no one size-fits-all approach was envisioned in the Access Order's transition toward interstate switched access rates and rate structures. CenturyLink Brief at 7.

According to CenturyLink, the Access Order did not find specific switched access rates at any particular phase to be just and reasonable. CenturyLink stresses that the Access Order did not set forth the specific switched access rates to be implemented nor did it serve to require specific revenue reductions be achieved at each phase. The Access Order simply does not guarantee specific rate levels or specific revenue reductions at any phase of the transition period.

According to CenturyLink, each of the Access Order's phased reductions is premised upon the Board's threshold determination of a transition to interstate rates and rate structures as applicable to each New Jersey ILEC. But for the requirement to transition to interstate rates and rate structures, the switched access rate reductions (and the elimination of the intrastate CCL rate) at each of the phases in the Access Order would not exist.

CenturyLink maintains that as recognized by the Board in the Access Order, CenturyLink is an ILEC with non-matching intrastate and interstate switched access rate structures. A simple one-third reduction to any given rate element will not effectuate a one-third reduction between state and interstate rates as required. The Access Order's transition requirement and the rate changes implementing that transition at each phase are not severable relative to CenturyLink. Id. at 8.

CenturyLink further maintains that use of the composite rate methodology at Phase II allows it to begin a coordinated transition to its interstate rates and rate structures without undertaking unnecessarily complicated estimates such as those proposed by AT&T. That composite rate is a one-third reduction of the difference between CenturyLink's existing composite rate of \$0.027644 for intrastate switched access services and the interstate switched access composite rate. In compliance with the Access Order's transition to parity, therefore, the Phase II Tariff reduces CenturyLink's intrastate switched access rates by one-third of the difference between CenturyLink's existing New Jersey intrastate switched access rates and CenturyLink's existing interstate switched access rates. Id. at 9.

CenturyLink maintains that the composite rate method uses a common set of minutes in order to produce comparable rates with which to compute the required one-third reduction as required by the Access Order. First, the Board itself relied upon composite rates in other portions of the Access Order to cap CLEC intrastate switched access rates. As CenturyLink witness Mr. Harper explained, the same consistency resulting from the composite rate methodology is necessary to provide for rate reductions when an ILEC, such as CenturyLink, transitions not only to different rates, but also to a different rate structure. AT&T utilized the same composite rate methodology as CenturyLink when calculating the composite interstate and intrastate rates as the starting point. Id. at 12.

CenturyLink further states that AT&T's methodology unhinges the overall reduction from the Order's required one-third reduction, and substitutes, instead, a methodology that creates an evolving total reduction. AT&T's calculations are designed to provide it with the maximum possible benefits to the potential detriment of other carriers. Conversely, CenturyLink applied its rate reductions evenly between the local transport and local switching rate elements producing a uniform reduction to the intrastate access rate elements. As a result, all carriers, regardless of which CenturyLink switching elements they utilize, receive benefits from CenturyLink's reductions. Ibid.

CenturyLink maintains that its Phase II Tariff is also abundantly reasonable. The Phase II Tariff contains a composite intrastate switched access rate of \$.023513. CenturyLink had originally noticed and filed a rate of \$.026131. The Phase II Tariff increases CenturyLink's Phase II revenue reduction by 53%, from approximately \$860,000 as originally noticed to approximately \$1.32 million. CenturyLink revised its Phase II Tariff to exclude toll free revenues not based upon the use of these services, how these services may be billed, or allegations regarding these services. These services exist in CenturyLink's existing tariffs and rightly can be included in a transition to interstate parity. AT&T wrongly claims CenturyLink arbitrarily added toll free rate elements into the composite calculation, knowing that these rate elements are "billed" entirely in the interstate jurisdiction. The Phase II Tariff reasonably cures a significant portion of AT&T's original objections by separating the 800 data base rates and revenues from the composite rate calculations (thereby increasing the proposed reduction by 53%). Id. at 13.

CenturyLink contends that nowhere in the Access Order is an ILEC prohibited from using the same composite rate method that the Board itself relied upon in the Access Order. AT&T's view that the composite methodology "is solely guidance to CLECs" is clearly misguided and wrong. Id. at 15. AT&T has the burden to support its interpretation of the Access Order and has failed to do so. Re-writing the Access Order now to require reductions to rate elements effectively guarantees rate reductions, according to CenturyLink. The Access Order simply does not require or guarantee a one-third reduction to specific intrastate switched access rate elements. Id. at 17—19.

CenturyLink further contends that AT&T's request that the Board require CenturyLink to undertake a "transport rate restructure" at this time would modify the Order's express provisions giving CenturyLink a full 36-month transition to interstate parity of rates and rate structures, and raises issues that are subject to several pending appeals in the Appellate Division. CenturyLink Brief at 20. The Access Order gave the ILECs the benefit of a full 36month phase in period for mirroring interstate rate structures — *i.e.*, Phase IV, not earlier. Id. at 21.

CenturyLink argues that AT&T's proposal to require CenturyLink to mirror its interstate transport rates before Phase IV must be rejected. Finally, CenturyLink proffers that AT&T's restructuring proposal would involve considerable effort without any demonstrated public benefits, as demonstrated by the proceeding in Georgia as described in the testimony of Mr. Harper. Id. at 21. CenturyLink concludes that its Phase II and III filings are not in need of significant restructuring to "facilitate compliance" with the Access Order.

CenturyLink contends that AT&T's claim that CenturyLink "has provided no evidence or proof, that the disparate elements it proposes for the composite are equivalent" is also false and misleading. AT&T fails to rebut the use of composite rates to determine the required Phase II reduction amount. Neither AT&T nor any other carrier knows the demand level or mix that will exist among elements in the future. CenturyLink's composite rate approach remains a fair,

simple, and consistent way of determining the Access Order's required rate reduction for Phase II. Accordingly, AT&T's "element" proposal and its claims remain meritless.

According to CenturyLink, nowhere in the Board's Access Order are the rate reductions for the Access Order's phases qualified by any concept of how access services are used by the carriers – whether measured by each rate element used or by minutes/volumes used. How carriers use services is not relevant to implementation of the Access Order's transition to interstate rates and rate structures. The Access Order itself relied upon composite rates to set CLEC access rates, and did not mandate how to implement mirroring for the ILECs. The relative "use" of access services has nothing to do with the Access Order's pricing of switched access services – not for CLECs and not for ILECs. Id. at 23.

AT&T effectively contends that the composite methodology is flawed because it fails to consider "use" of "interstate elements and how use can be different proportions than intrastate volumes" (or MOUs) by "access purchasers." CenturyLink maintains that the composite rate methodology ensures fair and consistent implementation of both: (1) the rate reductions at Phase II (and Phase III); and (2) the transition to interstate rates and rate structures for CenturyLink. Id. at 24.

Finally, the Access Order at Phase IV does not require any sort of calculation and does not mandate any specific reduction, per CenturyLink. Instead, CenturyLink argues it will achieve compliance with the order by mirroring its then existing interstate switched access tariff and apply those rates and rate structures going forward. Therefore, CenturyLink argues, AT&T's assertion that CenturyLink will not reach parity at Phase IV is patently incorrect. Ibid.

CenturyLink adds that AT&T's ILEC sister affiliate in Missouri and CenturyLink in Missouri used the same composite rate methodology to implement recent access reductions required by statute in Missouri. The Missouri example is relevant to the Board's decision in this proceeding. CenturyLink contends it shows that the composite rate methodology is an acceptable method by which to implement both switched access reductions and the transition toward interstate parity for carriers with differing intrastate and interstate access rates and structures. Id. at 26.

Also, CenturyLink states AT&T's attempts to distinguish the relevance of its sister affiliate's actions on the ground that the Missouri statute specifically referenced "composite" rate reductions side steps its relevance. The Missouri example, per CenturyLink, conclusively demonstrates that AT&T's Missouri ILEC complied with the statute by interpreting the statutory phrase "composite interstate switched exchange access rates" to require a straightforward calculation of a "composite interstate switched exchange access rate" to effectuate a required 6% reduction in Missouri. Like CenturyLink's New Jersey intrastate access rates, AT&T's Missouri ILEC interstate access rates do not reflect the current interstate access reform structure. As Mr. Harper testified, unlike AT&T's recommendation for CenturyLink in New Jersey, it does not appear that AT&T specifically targeted local switching or information surcharge rate elements for a 6% reduction in Missouri. Id. at 27.

CenturyLink asserts that AT&T's request that the Board "refund the overcharges. with interest" is unauthorized and improper. The Access Order envisioned a true-up process but did not authorize refunds or interest as AT&T now seeks. AT&T also requests that the Board require a "proper CLEC composite rate and order CLECs to comply with that corrected rate" but fails to address how the Board should apply the remedy requested i.e., prospective relief or improper retroactive rate relief. Therefore, CenturyLink asserts that the relief requested by AT&T violates the Access Order, is unsupported by credible evidence, and should be denied. Ibid.

DISCUSSION AND FINDINGS

Through the Motion, the Joint Movants ask the Board to resolve a narrowly tailored rate issue that arose in connection with the filing of CenturyLink's Phase II Tariff. The Board's Access Order directs carriers, during each of the four phases of the 36 month post Access Order process, to file revised tariffs. Access Order at 29—30. The Joint Movants dispute whether the January 21st, 2011, CenturyLink Phase II Tariff implements the appropriate rate reductions ordered by the Board. The Access Order, in addressing longstanding and disputed intrastate exchange access rates and associated subsidies, provided each ILEC and CLEC with specific measures to follow to carry out the ordered reductions in intrastate switched access rates. The relevant language in the Order concerning Phase II states:

- (1) Embarq shall reduce its intrastate switched access rates by one-third of the difference between its Intrastate Access Rates and its Interstate Access Rates;
- (2) Verizon shall further reduce its MSLC rate (of 73.5 cents) by an amount equivalent to one-third of the then existing remaining difference between total intrastate switched access revenues and the amount that would be generated if Verizon's intrastate switched access rates were set at its interstate rates;
- (3) Warwick Valley Telephone shall reduce its CCLC by an additional one-half.
- (4) CLEC rates shall not exceed the composite per minute intrastate rate charged by the ILEC in whose territory switched access calls are originated or terminated.
[Access Order at 30.]

The Board determined it appropriate to prescribe a different method of effectuating the required intrastate access charge reductions for each provider. Each of the four phases of the transition process envisioned by the Order specifies how each carrier should achieve access rate reductions. CLECs were directed to cap their rates based upon a composite rate while the ILECs had individual directions. The Access Order specifically addresses CenturyLink's "rates," not its revenues. In each phase after Phase I, CenturyLink (then Embarq) is directed to reduce its rates, not revenues and not composites. Contrary to CenturyLink's contention, the Board found a reduction in **rates** at each phase of the process after removal of the CCLC was necessary and appropriate.

The Board in drafting the Access Order was cognizant of the differences between carriers, and rendered a reduction plan tailored for each provider. Aware of the disparate rates and rate structures of CenturyLink, as well as the rates of other providers, the Board deemed it appropriate to outline the process in phases to ensure that carriers were given sufficient time to make the necessary adjustments to comport with the terms of the Order. CenturyLink was instructed to reduce its intrastate switched access rates by one-third of the difference between its intrastate access rates and its interstate access rates in Phase II, by one-half of the difference in Phase III, and by any remaining difference necessary to have its intrastate switched access rates equal to its interstate access rates at Phase IV. This in fact, served as a directive to CenturyLink to implement specific rate reductions. The Order stated "that the subsidy elements specifically the ILECs' Carrier Common Line Charge (CCLC) and Verizon's Market Share Line Charge (MSLC) shall be eliminated and or reduced first, followed by other **access rate elements**." Access Order at 29. Despite CenturyLink's arguments to the contrary, the instruction to reduce intrastate switched access rates by one-third for Phase II is unambiguous.

Therefore, the Board **HEREBY FINDS** that CenturyLink did not follow the directive for Phase II of the Access Order when it issued a tariff that reflected a composite rate. By excluding CenturyLink from the ordering paragraphs requiring use of a composite rate, the Board did not authorize CenturyLink to reduce its intrastate access rates based on a composite. The use of a composite rate was reserved exclusively for CLECs. Therefore, CenturyLink is precluded from utilizing a composite rate methodology for determining its required reductions.

Moreover, it is the Board's understanding that CenturyLink does not charge interexchange carriers composite rates, and does not have a tariff filed with the Board that reflects a composite rate. The Access Order speaks to individual carriers, and directs CenturyLink to reduce its "intrastate switched access rates." Access Order at 30.

The Motion currently before the Board asks that the Board interpret limited provisions of the Access Order. Resolution of disputes of bill and rate adjustments was contemplated and addressed in the Access Order. The Board stated that rate and billing adjustments would be handled through a true-up process as appropriate. Access Order at 31. While AT&T has requested that interest be paid, the Access Order does not specifically provide for interest and given the limited period of time addressed by this Order, the Board will not impute that requirement on this type of wholesale billing adjustment.

Regarding the transition to interstate rates and the rate restructure timing issue, the Board agrees with CenturyLink that it did not contemplate a full mirroring of rates and rate structures until the conclusion of Phase IV as exhibited in the language of the Order. The 36 month phase in transition is intended to accommodate concerns raised by carriers regarding rate continuity and differing rate structures. Access Order at 29. Phases I through III focus on subsidy and rate reductions while Phase IV addresses the requirement that on February 1, 2013 all rates and rate structures in the intrastate and interstate jurisdictions should be identical. The mirroring of interstate access rates and rate restructures was not contemplated until Phase IV. Accordingly, mandating restructuring at this phase would modify the Access Order which the Board declines to do in the context of what the Board sees as a rate and billing dispute.

Therefore, the Board **HEREBY FINDS** that AT&T is correct in its understanding that the appropriate mechanism to achieve the desired change in intrastate access rates is through an element by element rate reduction of one-third for CenturyLink's required Phase II reductions. Thus, the Board **HEREBY GRANTS** the Joint Movant's Motion to Suspend CenturyLink's Phase II Tariff filed on January 21st, 2011, and **HEREBY ADOPTS** the following rates for CenturyLink's Phase II Tariff: (1) the LS2 rate element at 1.1785 cents per minute, (2) the Information Surcharge at 0.0335 cents, and (3) the composite rate applicable to CLECs at 2.235 cents per minute. Further, the Board **HEREBY REJECTS** CenturyLink's use of a composite rate methodology.

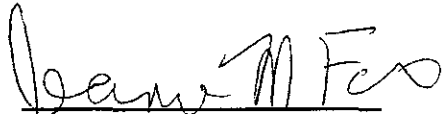
Accordingly, the Board **FURTHER ORDERS** CenturyLink true up its rates within 120 days of the date of this Order, and issue the necessary bill credits. CenturyLink must true-up the difference between the rates ordered herein and those filed on January 21st, and in effect since February 1, 2011. Further, the Board **HEREBY ORDERS** CenturyLink and the CLECs to refile their Phase II tariffs in accordance with this Order within 14 days of the date of this Order.

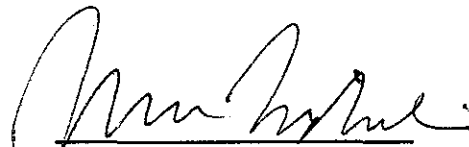
The Board **HEREBY DENIES** the Joint Movants' request that CenturyLink file by July 31, 2011, a revenue neutral Local Transport Restructure, and the request that the Board order refunds with interest.

DATED: 5/16/11

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

