BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of The Filing by Local Exchange Carrier Association, Inc. for Approval of Revisions to its Access Tariff No. 1	Docket No. TC12-040

RESPONSIVE TESTIMONY OF

LAWRENCE J. BAX

ON BEHALF OF
AT&T CORP.
(FORMERLY AT&T COMMUNICATIONS
OF THE MIDWEST, INC.)

PUBLIC VERSION

December 19, 2012

I. INTRODUCTION & SUMMARY

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Lawrence (Larry) J. Bax. My business address is 125 Corporate Office Drive, Room 416, Earth City, Missouri, 63045.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by AT&T Services, Inc. in the Access Management organization with responsibility for the review of public policy and regulatory activity, especially as it relates to local exchange access and intercarrier compensation.

Q. ON WHOSE BEHALF ARE YOU PRESENTING THIS TESTIMONY?

A. I am testifying on behalf of AT&T Corp., formerly AT&T Communications of the Midwest, Inc.,[1] ("AT&T") which is a certificated provider of interexchange service in the State of South Dakota and, as such, uses the intrastate switched access services provided by City of Brookings Municipal Telephone Department ("Brookings") and other local exchange carriers ("LECs") in South Dakota.

[1] On June 1, 2012, AT&T Communications of the Midwest, Inc. and AT&T Corp. notified the Commission of an internal corporate reorganization which advised that on or about October 31, 2012, AT&T Communications of the Midwest, Inc., along with other AT&T subsidiaries that provide regulated telephone service throughout the country, will merge with and into their corporate parent AT&T Corp. Therefore effective November 1, 2012 AT&T Corp. is the successor by merger to AT&T Communications of the Midwest, Inc.

Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL EXPERIENCE.

A. I possess a Master of Arts-Telecom Management from Webster University in St. Louis, Missouri and a Bachelor of Arts-Government from Southern Illinois University in Edwardsville, Illinois. I have formal training in telecommunications economics, law and regulation from Telcordia Technologies (i.e., formerly Bell Communications Research, Inc. or Bellcore) and INDETEC International, among others. Since joining the company in 1980, I have served in various regulatory positions, with responsibilities including witnessing, testimony development and support, policy development and advocacy, cost and rate development, and tariff management.

Q. HAVE YOU PREVIOUSLY APPEARED AS A WITNESS IN A REGULATORY PROCEEDING?

A. Yes. I have testified in the following states: Illinois, Iowa, Kansas, Nebraska, Washington, and Wyoming. My participation in those proceedings included filing written testimony and/or delivering oral testimony.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to the Direct Testimony of Jo Shotwell ("Shotwell Direct Testimony") in support of the access tariff revisions filed by Local Exchange Carrier Association, Inc. ("LECA") on behalf of its members, including

Brookings[2] and to the Direct Testimony of Steve Meyer ("Meyer Direct Testimony") which acknowledges the correctness and appropriateness of "the underlying data used by LECA and the calculation of rates for City of Brookings."[3]

More precisely, my testimony demonstrates that the underlying data used by LECA in the calculation of the transitional rate on behalf of Brookings is incorrect and inappropriate. Specifically, the fiscal year 2011 terminating intrastate switched access revenue, which serves as the basis for the calculation of the transitional rate, inappropriately includes revenues associated with the application of its end office local switching and common line access charges to terminating wireless minutes of use ("MOUs").[4]

Federal Communications Commission ("FCC") orders, rules and regulations and LECA Tariff No. 1[5] prohibit local exchange carriers ("LECs") from applying end office local switching access charges to wireless MOUs if no end office local switching functions are performed by the LEC. FCC rules also prohibit the application of common line charges to wireless traffic. Furthermore, access charges for wireless MOUs must be billed pursuant to an agreement between the parties and not under a tariff.

I provide the Commission with a corrected view of the transitional rate calculation (i.e., relying on an appropriate fiscal year 2011 terminating intrastate switched access

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[2] The access tariff revisions are required by the FCC as part of its effort to reform existing intercarrier compensation regimes. _See_, *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 Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208; Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (2011) ("ICC/USF Order").

[3] *Meyer Direct Testimony* at page 2, lines 20-22.

[4] *Shotwell Direct Testimony* at page 8, lines 13-18.

[5] The applicable FCC and LECA Tariff No. 1 cites are provided in the discussion herein.

revenue number void of end office local switching and common line revenues associated with wireless MOUs). The corrected July 1, 2012 intrastate transitional rate does not require an adjustment (i.e., as did the Brookings' calculated intrastate transitional rate) to produce a total rate which does not exceed the FCC's mandated cap.[6]

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. My testimony is organized as follows:

> **Section II:** Review of the Brookings July 2012 Transitional Rate Calculations Worksheet;
>
> **Section III:** Brookings' Inappropriate Application of Tariffed End Office Local Switching and Common Line Access Charges for Wireless Traffic;
>
> **Section IV**: Recalculation of the Brookings Transitional Rate Using the Appropriate Fiscal Year 2011 Terminating Intrastate Switched Access Revenues; and,
>
> **Section V:** Summary and Conclusion.

II. REVIEW OF THE BROOKINGS JULY 2012 TRANSITIONAL RATE CALCULATIONS WORKSHEET

Q. HAVE YOU REVIEWED THE BROOKINGS JULY 2012 TRANSITIONAL RATE CALCULATIONS WORKSHEET?

A. Yes. A replication of the Brookings July 2012 *Transitional Rate Calculations Worksheet* ("Brookings Worksheet") is attached to this testimony as Bax Responsive Exhibit LJB-1. Although the worksheet contains a series of calculations, I want to

[6] Title 47 CFR §51.909(a)(2).

emphasize that AT&T's concern focuses on the Line 3 calculation of fiscal year 2011 terminating intrastate switched access revenue. If this number is recalculated properly, as detailed herein, AT&T has no dispute with the methodology used by Brookings for the remainder of the worksheet. The correction to the revenues on Line 3 will result in an appropriate rate being calculated on Line 44.

Q. PRIOR TO REVIEWING *BROOKINGS WORKSHEET*, DID AT&T HAVE ANY REASON TO BELIEVE THAT THE BROOKINGS FILING MIGHT NOT PROPERLY REFLECT THE RATE REDUCTION REQUIRED BY THE FCC'S *ICC/USF ORDER*?

A. Yes. For the past several years, AT&T has had an ongoing dispute with Brookings about Brookings' application of its intrastate tariff to traffic that did not originate from or terminate to a Brookings end user, but instead originated from or terminated to end users of a Commercial Mobile Radio Service ("CMRS") carrier whose Mobile Telephone Switching Office ("MTSO") subtends the Brookings network.

Because of this situation, I was particularly interested to determine how the Brookings' calculations accounted for this traffic. In fact, Brookings included those inappropriate revenues in its calculation of the transitional rate, and, consequently, the resulting rate is overstated. As a result, I was not surprised to find the note accompanying Line 50 of the *Brookings Worksheet* which indicated that Brookings had adjusted the transitional rate it produced so that the total rate[7] (i.e., the

[7] <u>See</u>, Table 1 on Bax Responsive Exhibit LJB-2 on the lines titled "Brookings 1st View" and "Brookings 2nd View."

restructured intrastate rate[8] plus the Brookings' calculated transition rate) did not exceed the then current intrastate rate of $0.125, which was capped by the FCC's *ICC/USF Order*.[9]

Q. WERE YOU ABLE TO CONFIRM THAT BROOKINGS INCLUDED THOSE INAPPROPRIATE REVENUES IN ITS CALCULATION OF THE TRANSITIONAL RATE?

A. Yes. As acknowledged in Brookings' response number 5, included in *LECA's Confidential Responses to Staff's First Data Requests* ("LECA Responses to Staff"),[10] I determined that the number of MOUs used to calculate the fiscal year 2011 terminating intrastate switched access revenue on Line 3 of the *Brookings Worksheet* is ***significantly*** greater than the MOUs used on Line 7 and on Line 43.

In calculating the fiscal year 2011 terminating intrastate switched access revenue on Line 3 of the *Brookings Worksheet*, Brookings used **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** MOUs.[11] Only **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** MOUs were used on Line 7 and on Line 43. The MOUs underlying the revenues on Line 3 are **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of the MOUs on Line 7 and on Line 43.

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[8] Throughout my testimony and exhibits I use the term "restructured intrastate rate" to refer to intrastate demand cast across the interstate rate structure as shown in Line 7 through Line 38 of the *Brookings Worksheet*.

[9] The calculations underlying these rates are described in the *Shotwell Direct Testimony* at page 10, lines 1-13. The data is also provided by LECA in its response #3 of *Confidential Responses to AT&T'S First Set of Data Requests to LECA* ("LECA Responses to AT&T"). The *LECA Responses to AT&T*, in their entirety, are attached as Bax Responsive Exhibit LJB-3. As described herein, FCC rules Title 47 CFR §51.909(a)(2) cap the terminating intrastate switched access rate at the December 29, 2011 level.

[10] *LECA Responses to Staff* are attached as Bax Responsive Exhibit LJB-4.

[11] *LECA Responses to Staff* at number 5, attached as Bax Responsive Exhibit LJB-4.

The additional MOUs included in the revenue calculation on Line 3 of the *Brookings Worksheet* are associated with this wireless traffic.[12] As detailed herein, Brookings ***inappropriately*** billed end office local switching and common line access rates on those additional MOUs (i.e., representing wireless traffic in the intrastate jurisdiction) – Brookings does not bill its tariffed end office local switching and common line access rates on wireless traffic in the interstate jurisdiction.[13] The MOUs on Line 7 and on Line 43 of the worksheet ***do not*** include these wireless MOUs.[14]

III. BROOKINGS' INAPPROPRIATE APPLICATION OF TARIFFED END OFFICE LOCAL SWITCHING AND COMMON LINE ACCESS CHARGES FOR WIRELESS TRAFFIC

Q. PLEASE SUPPORT YOUR ASSERTION THAT "BROOKINGS . . . BILLED END OFFICE LOCAL SWITCHING AND COMMON LINE ACCESS RATES ON WIRELESS TRAFFIC IN THE INTRASTATE JURISDICTION."

A. Brookings, by its own admission, utilizes the $0.125 rate contained in LECA Tariff No. 1 in the calculation of the revenues on Line 3 of the *Brookings Worksheet*.[15] The

[12] *LECA Responses to AT&T* at response number 10, attached as Bax Responsive Exhibit LJB-3.

[13] *LECA Responses to Staff* at response number 5, attached as Bax Responsive Exhibit LJB-4, stating, in part: "The City of Brookings' Interstate Access Tariff does not apply the end office rate element to wireless MOUs. Therefore, Line 7 of the rate sheet reflects a lower level of end office MOUs than was used to calculate the Intrastate Transitional Rate . . ." In fact, Brookings does not plan to bill end office or common line charges on wireless traffic on a forward looking basis, in either jurisdiction, as evidenced by Footnote 1 on the tariff page attached as Exhibit C to Ms. Shotwell's direct testimony..

[14] *LECA Responses to AT&T* at response number 10, attached as Bax Responsive Exhibit LJB-3.

[15] *LECA Responses to Staff* at number 5, attached as Bax Responsive Exhibit LJB-4, stating **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

rate reflected in the LECA Tariff was the result of a settlement stipulation between LECA, its members and other parties, including AT&T to establish a consolidated tariffed access rate of $0.125 for traffic originating from or terminating to the LECA members' end user customers.[16]As illustrated in Table 2 of Bax Responsive Exhibit LJB-2, implementation of the consolidated tariffed rate replaced five separate rate elements previously included in the LECA tariff: carrier common line (i.e., separate elements for originating and terminating), local switching (i.e., separate elements for originating and terminating), and local transport.[17]

Following implementation of the consolidated tariffed rate, the following footnote was ascribed to each of the historical rate elements (i.e., in lieu of an element specific rate): "Based on the Settlement Stipulation approved by the South Dakota Public Utilities Commission (SDPUC) on November 14, 2006, LECA will bill 12.5¢ per minute for both Originating and Terminating minutes."[18] Therefore, the tariffed rate inherently includes charges for carrier common line, local switching and local transport.[19]

Whenever a LECA member billed the consolidated tariffed rate, that member charged the billed party for each of these rate elements. Because Brookings applied the whole of the tariffed rate to wireline ***and*** wireless MOUs in calculating the

[16] *Settlement Stipulation* executed by the parties on November 7, 2006. The *Settlement Stipulation* resolved a number of pending dockets including a docket involving City of Brookings Municipal Telephone Department (i.e., TC04-112).
[17] *Local Exchange Carrier Association, Inc. Tariff No. 1*, 22nd Revised Page 17-1 and 22nd Revised Page 17-4. The referenced tariff pages are attached as Bax Responsive Exhibit LJB-5. LECA and Brookings confirm these are the correct tariff pages. See, *Confidential Supplemental Responses to AT&T'S First Set of Data Requests to LECA* ("LECA supplemental Responses to AT&T") at number 11, attached as Bax Responsive Exhibit LJB-6.The rates for each of the terminating elements are discussed in greater detail herein.
[18] *Local Exchange Carrier Association, Inc. Tariff No. 1*, 23rd Revised Page 17-1 and 23rd Revised Page 17-4. The referenced tariff pages are attached as Bax Responsive Exhibit LJB-7.
[19] The rate categories for these various elements are described in Local Exchange Carrier Association, Inc. Tariff No. 1 at section 6.1.3.

revenues on Line 3 of the *Brookings Worksheet*, it assessed tariffed end office local switching and common line access charges on wireless traffic.

Q. WAS IT APPROPRIATE FOR BROOKINGS TO USE THE $0.125 CONSOLIDATED RATE FOR ALL OF ITS MINUTES OF USE WHEN IT CALCULATED THE REVENUES ON LINE 3 OF THE *BROOKINGS WORKSHEET*?

A. No. While the tariffed $0.125 consolidated rate was appropriate for minutes carried by Brookings on its wireline facilities, it was not appropriate for minutes that originated from or terminated to a CMRS carrier's end user. Moreover, the FCC requires the LEC to "Calculate total revenue from Transitional Intrastate Access service at the carrier's intrastate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand ***for each rate element***."[20] As I describe below, FCC rules allow a LEC to charge for only those rate elements related to a function the LEC is providing. By applying the tariffed $0.125 consolidated rate to both wireline and wireless minutes in Line 3 of its Worksheet, Brookings established an inflated and inappropriate revenue number as its starting point.

Q. PLEASE DESCRIBE THE REGULATORY PARADIGM GOVERNING WIRELESS TRAFFIC.

A. The FCC's orders, rules and regulations define the regulatory paradigm governing wireless traffic. With respect to wireline traffic, state boundaries determine the

[20] Title 47 CFR §51.909(b)(2)(ii). (emphasis added) Certainly, the FCC anticipated that any reported revenues, and the underlying rates and demand, would be appropriate and lawful under its orders, rules and regulations.

jurisdiction of the traffic. Generally speaking, traffic with end points in the same state is intrastate in jurisdiction. Traffic with end points in separate states is interstate in jurisdiction.

With respect to wireless traffic, the boundaries (i.e., for regulatory purposes) are determined by Major Trading Areas ("MTAs").[21] Traffic with end points in the same MTA is characterized as ***intra***MTA (i.e., local). Traffic with end points in separate MTAs is characterized as ***inter***MTA (i.e., nonlocal). Similar to wireline traffic, wireless traffic can also be characterized as either intrastate or interstate. InterMTA calls are non-local calls, whether intrastate or interstate, and are subject to access charges.[22]

With respect to traffic originating from or terminating to a CMRS carrier (i.e., wireless traffic), the FCC requires mandatory detariffing (i.e., CMRS access services cannot be sold through a tariff), regardless of the jurisdiction.[23] Instead, the FCC has determined that such billing must be accomplished by way of a specific agreement between an IXC, like AT&T, and a CMRS carrier.[24] As the FCC explained, "[f]ollowing the *CMRS Second Report and Order*, tariffs no longer were available to

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[21] A Major Trading Area is a geographic region defined originally in the Rand McNally Commercial Atlas and Marketing Guide. More information regarding the FCC's use of MTAs can be found at: http://transition fcc.gov/oet/info/maps/areas/ *See, also, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-98; CC Docket No. 95-185, First Report and Order, FCC 96-325, Released August 8, 1996, at paragraphs 1036. ("Local Competition Order").

[22] *Local Competition Order* at paragraphs 1035-1036.

[23] *In the Matter Of Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, Declaratory Ruling, WT Docket No. 01-316, 17 FCC Rcd. 13192, 2002, Released: July 3, 2002 at paragraphs 8 and 11. ("Sprint Declaratory Ruling") Paragraph 8 of the *Sprint Declaratory Ruling* states, "CMRS access services are subject to mandatory detariffing, and it is therefore undisputed that [the CMRS provider" could not have imposed access charges on [the IXC] pursuant to any tariff."

[24] *Sprint Declaratory Ruling* at paragraph 12.

CMRS carriers; therefore compensation [for the provision of access] is available only through an agreement."[25]

Q. WHY DOES THE DIFFERENCE IN THE RULES THAT CONTROL THE IMPOSITION OF ACCESS CHARGES ON WIRELINE AND WIRELESS TRAFFIC IMPACT THE APPROPRIATENESS OF BROOKINGS CALCULATION OF ITS TRANSITIONAL RATE?

A. The appropriate application of ***access charges*** with respect to wireless traffic is at the core of AT&T's objection to the data underlying the *Brookings Worksheet* (i.e., specifically, the fiscal year 2011 terminating intrastate switched access revenue on Line 3). By inappropriately charging for access service Brookings did not provide (i.e., applying end office local switching and common line rates on calls originating from or terminating to a CMRS carrier) and then including the revenues associated with those charges in its calculation of fiscal year 2011 terminating intrastate switched access revenue, Brookings overstated the revenues used as the basis of its calculations, resulting in an overstated transitional rate. In the instant case, even if Brookings ***was*** a CMRS carrier, it could not have billed AT&T its ***tariffed*** rate.[26]

[25] *Sprint Declaratory Ruling* at paragraph 11.
[26] Furthermore, as detailed herein, LECs cannot bill IXCs for services provided by CMRS carriers absent an agreement between the LEC and CMRS carrier and the IXC and the CMRS carrier. As indicated in the *LECA Supplemental Responses to AT&T*, attached as Bax Responsive Exhibit LJB-3, at responses number 15, 16, 18 and 19, no such agreements or other arrangements for intercarrier compensation exist between the parties in the instant case.

Q. IS THERE ADDITIONAL GUIDANCE FROM THE FCC THAT TARIFFED END OFFICE LOCAL SWITCHING AND COMMON LINE RATES ARE NOT APPLICABLE TO WIRELESS TRAFFIC?

A. The FCC has determined that carrier common line ("CCL") charges are not appropriate for wireless traffic:

> . . . charging CCL to IXCs for [Radio Common Carrier] connections is not consistent with the [FCC's] rules. In establishing the interstate access charge structure, the [FCC] designed CCL, along with subscriber line charges, to recover the LECs costs of providing subscriber loops. Indeed, the access rules specifically state that CCL shall be assessed to IXCs that "use local exchange common line facilities." The facilities connecting an [Radio Common Carrier's Mobile Telephone Switching Office] to the LEC's end office are not common line facilities, however.[27]

Thus, application of the consolidated tariffed $0.125 rate further violates FCC rules by imposing the CCL charge on IXC traffic which is being originated from or terminated to the end users of wireless providers.[28]

The bottom line is that Brookings' application of the LECA consolidated tariffed rate on wireless traffic is inappropriate in every respect.

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[27] *In the Matter of Bell Atlantic Telephone Companies Transmittal No. 418, Revisions to Tariff F.C.C. No. 1*, Order, DA 91-890, 6 FCC Rcd. 4794, Released: July 15, 1991 at paragraph 7.

[28] As illustrated in Table 2 of Bax Responsive Exhibit LJB-2, the LECA tariffed consolidated rate is designed to replace five rate elements in the LECA tariff which, prior to implementation of the consolidated rate, each had a distinct rate. Distinct rates for originating and terminating common line elements were among those five rate elements.

Q. MR. BAX, IS IT YOUR TESTIMONY THAT NO ACCESS CHARGES ARE DUE TO LECS FOR THE CARRIAGE OF WIRELESS TRAFFIC?

A. No. The LEC is entitled to recover from the IXC only that portion of the access service which the LEC actually provides and which is appropriate under the governing rules and regulations. This was described by the FCC as follows:

> Some [LECs] argue that they should be entitled to collect the full benchmark rate, even when they do not serve the end-user, if they enter into a joint billing arrangement with the carrier that does serve the end-user. We acknowledge that there are situations where a [LEC] may bill an IXC on behalf of itself and another carrier for jointly provided access services pursuant to meet point billing methods. We note, however, that the validity of these joint billing arrangements is premised on each carrier that is party to the arrangement billing only what it is entitled to collect from the IXC for the service it provides. In cases where the carrier serving the end-user had no independent right to collect from the IXC, industry billing guidelines do not, and cannot, bestow on a LEC the right to collect charges on behalf of that carrier. For example, the [FCC] has held that a CMRS carrier is entitled to collect access charges from an IXC only pursuant to a contract with that IXC. If a CMRS carrier has no contract with an IXC, it follows that a [LEC] has no right to collect access charges for the portion of the service provided by the CMRS provider.[29]

In summary, the FCC prohibits LECs from applying elements of access charges to wireless MOUs if the LEC itself does not perform the functions underlying those elements. In the instant case, Brookings is not performing end office local switching or common line functions when it receives traffic from AT&T and then passes on that traffic to the wireless provider for termination. It is the wireless provider that provides the terminating functionality, and only the wireless carrier is entitled to recover access charges associated with termination (e.g., local switching). Such a result is required by federal law.

[29] *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Eighth Report and Order and Fifth Order on Reconsideration, CC Docket No. 96-262, 19 FCC Rcd. 9108, Released: May 18, 2004 at paragraph 16. ("Eighth Report and Order")

Furthermore, even if the LEC has a joint billing agreement with the wireless provider terminating the call allowing the LEC to bill for services provided by the wireless provider, a separate agreement between that wireless provider and the IXC would have to be effected warranting the charges. There is no evidence that any such agreements exist between the parties in the instant case.[30]

Q. CAN YOU PROVIDE A DIAGRAM WHICH DEPICTS THESE LIMITATIONS AND RELATIONSHIPS AND THE APPROPRIATE RATES?

A. Yes. First, an understanding of switched access rates is necessary. As previously determined, Brookings utilizes LECA Tariff No. 1 for intrastate switched access which is at the core of the issues in this proceeding. The LECA tariff defines the following rate categories for the purposes of switched access services: local transport, end office and common line.[31]

As defined in the LECA tariff, local transport refers to "the charges related to the transmission and tandem switching facilities between the customer designated premises and the end office switch(es) where the customer's traffic is switched to originate or terminate the customer's communications."[32]

The LECA tariff defines end office as "the charges related to the local end office switching and end user ***termination functions necessary to complete the***

[30] As indicated in the *LECA Supplemental Responses to AT&T*, attached as Bax Responsive Exhibit LJB-3, at responses number 15, 16, 18 and 19, no such agreements or other arrangements for intercarrier compensation exist between the parties in the instant case.
[31] LECA Tariff No. 1 at §6.1.3. A fourth rate category, *chargeable optional features*, is also defined but is not pertinent to this discussion.
[32] LECA Tariff No. 1 at §6.1.3(A). The tariff also provides that "Local Transport will also apply if the [IXC] serving wire center and the end user serving wire center are collocated. Local Transport will apply to each minute of use for Switched Access Service."

transmission of Switched Access communications to and from the end users served by the local end office."[33]

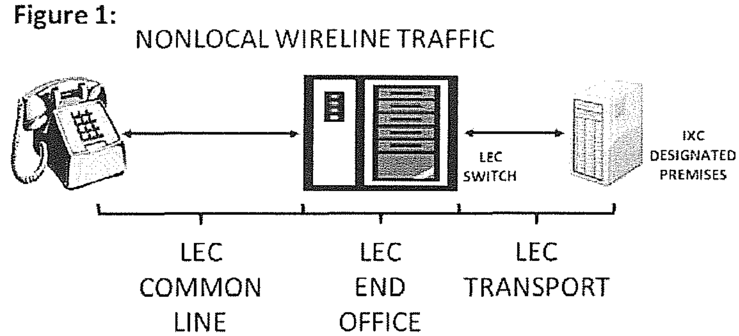
Lastly, the LECA tariff defines common line as "the use of end users' Telephone Company provided common lines by customers for access to such end users to furnish Intrastate Communications."[34]

Following, I provide the Commission with the contrasts between the transport and switching of a nonlocal wireline call and the transport and switching of a nonlocal wireless call:[35]

a) Nonlocal Wireline Traffic:

Figure 1,[36] following, depicts the transport, local switching and provisioning of common line associated with nonlocal wireline traffic between the IXC, the LEC and the LEC's end user:

Figure 1:



The IXC hands-off the traffic to the LEC at the LEC switch. In turn, the LEC terminates the traffic to its end user. In this scenario, the IXC

[33] LECA Tariff No. 1 at §6.1.3(B). (emphasis added)

[34] LECA Tariff No. 1 at §3.1. The cite is from the LECA language prior to implementation of the FCC's *ICC/USF Order*.

[35] For purposes of simplicity, I will reference the termination of calls in the following discussion. The Commission should note that the depictions and discussion are similarly applicable to scenarios involving the origination of calls.

[36] A similar illustration can be found in LECA Tariff No. 1 at §6.1.3.

compensates the LEC for all access charge rate elements (i.e., transport, local switching and common line), pursuant to the LEC's switched access tariff.

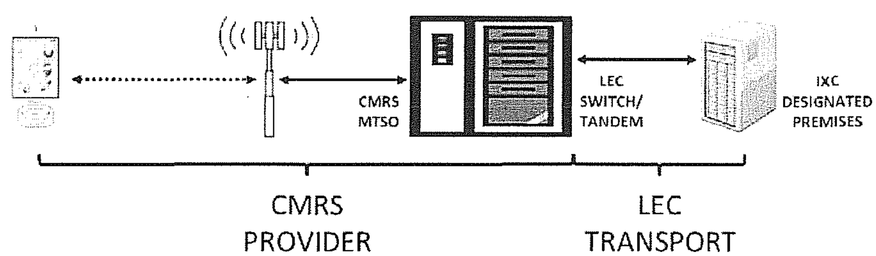
In Figure 1, the link between the IXC and the LEC switch would be rated as local transport to provide for the facilities between the IXC and the end office switch where the IXC traffic is switched to terminate with the end user. Because the LEC end office is providing the local switching functions in its end office necessary to complete the call to its end user, the link within the LEC switch would be rated as end office local switching. Lastly, the call utilizes the LEC's common line (i.e., a subscriber loop) to carry the IXC traffic to the end user permitting the LEC to bill the IXC for common line.

b) Nonlocal Wireless Traffic:

Figure 2, following, depicts the transport and switching of nonlocal wireless traffic handed off by an IXC to a LEC for delivery to a wireless carrier (i.e., and the appropriate rate categories and compensation arrangements among those three entities) for termination to the wireless provider's end user:

Figure 2:

NONLOCAL WIRELESS TRAFFIC



The IXC hands-off the traffic to the LEC at the LEC switch. The LEC then hands off the traffic to the wireless provider at the point of interconnection between those two carriers, often a port on the LEC's switch.[37] The wireless carrier then transports the traffic to its own switch, which in turn routes the traffic to the applicable cell tower, where the call is completed to the wireless end user.[38]

In Figure 2, the LEC is entitled to access compensation from the IXC for transport of the traffic from the IXC to the LEC's point of interconnection with the wireless provider. The LEC, however, is entitled to no further compensation from the IXC because the LEC provides neither local switching nor common line functions. As discussed above, local switching involves the termination functions necessary to complete the call to the end user, which the LEC does not do in this scenario.[39] Common line involves the loops used to terminate traffic to end users, and there are no loops employed in the termination of traffic to wireless end users.

As discussed herein, the wireless carrier may be entitled to charge the IXC, but only if such is provided for in an agreement between the parties.

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[37] As Brookings states, the wireless provider serving the end user **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** *LECA Supplemental Responses to AT&T* at number 14, attached as Bax Responsive Exhibit LJB-6.

[38] *LECA Supplemental Responses to AT&T* at numbers 12, 13, and 14, attached as Bax Responsive Exhibit LJB-6, confirms that the traffic in question is terminated to the end user via the wireless affiliate of Brookings.

[39] LECA Tariff No. 1 at §6.1.3. <u>See</u>, *also*, LECA Tariff No. 1 §6.1.3(B)(1) stating, "Local Switching does not apply to Feature Groups Band D Switched Access Services associated with Mobile Telephone Switching Offices (MTSOs) directly interconnected to a Telephone Company access tandem office."

Q. CAN THE WIRELESS PROVIDER IN FIGURE 2 BE CLASSIFIED AS AN END USER?

No. Both the FCC rules[40] and the LECA tariff[41] define an end user as:

> . . . any customer of an interstate or foreign telecommunications service ***that is not a carrier***, except that a carrier other than a telephone company shall be deemed to be an "end user" when such carrier uses a telecommunications service for administrative purposes and a person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an "end user" if all resale transmissions offered by such reseller originate on the premises of such reseller. (emphasis added)

The wireless provider in Figure 2 (i.e., and in the instant case) is a carrier and cannot be an end user since the service in question is not for "administrative purposes" and the wireless provider is not acting as a reseller.

Q. WHAT ACCESS CHARGES IS BROOKINGS ENTITLED TO WITH RESPECT TO THE WIRELESS TRAFFIC AT ISSUE IN THIS PROCEEDING?

A. Only those charges which represent the functions that Brookings performs in the carriage of wireless traffic. As illustrated and described herein, Brookings does not perform any end office local switching or common line functions. As illustrated in Table 2 of Bax Responsive Exhibit LJB-2, elimination of the end office local switching and common line rate elements leaves only the transport rate element as

[40] *See*, Title 47 CFR §69.2(m).
[41] *See*, LECA Tariff No. 1 at §2.6.

billable by Brookings to the IXC with respect to wireless MOUs, as demonstrated by the discussion herein.[42]

IV. RECALCULATION OF THE BROOKINGS' TRANSITIONAL RATE USING THE APPROPRIATE FISCAL YEAR 2011 TERMINATING INTRASTATE SWITCHED ACCESS REVENUES

Q. IS THE METHODOLOGY USED BY BROOKINGS ON ITS WORKSHEET IN COMPLIANCE WITH THE FCC'S ORDERS, RULES AND REGULATIONS?

A. No. In summary, the purpose of the *Shotwell Direct Testimony* (and, by reference, the *Meyer Direct Testimony*) is to support and defend that "the calculations for the City of Brookings are in compliance with the FCC Order and rules."[43]

While Brookings may ***appear*** to be in compliance with the FCC's *ICC/USF Order*, as well as Title 47 CFR §51.903 and Title 47 CFR §51.909 of the FCC's rules, because the underlying data are inappropriate (i.e., the data do not comply with either the FCC's orders, rules and regulations or the LECA Tariff No. 1), Brookings cannot support and defend that it ***is*** in compliance.

AT&T takes issue with Brookings' inappropriate application of end office local switching and common line access charges to wireless traffic in violation of FCC orders, rules and regulations, and the LECA Tariff No. 1, as described herein. As a

[42] This conforms to the depiction in Figure 2, as well as the discussion thereto.

[43] *Shotwell Direct Testimony* at page 11, lines 6-11. Similarly, Attachment A and Attachment B to the *Shotwell Direct Testimony* are designed to "prove" compliance by describing the "step-by-step" methodology and providing the recently adopted FCC rules.

result of Brookings' noncompliant behavior in that respect, the fiscal year 2011 terminating intrastate switched access revenue number on Line 3 of the *Brookings Worksheet*, which forms the very basis for those calculations, includes inappropriate revenues and renders the methodology and the results noncompliant.

Brookings' defense is that it was required by the FCC rules[44] to use the fiscal year 2011 terminating intrastate switched access revenues.[45] Actually, the FCC requires the LEC to "Calculate total revenue from Transitional Intrastate Access Service at the carrier's intrastate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand ***for each rate element***."[46] Explicitly, Title 47 CFR §51.909(b)(2)(ii) requires carriers to disaggregate demand by rate element which Brookings did not do.

Contrary to the testimony on its behalf, Brookings is not in compliance with either the FCC's orders, rules and regulations or its own intrastate access tariff.

Q. HOW DO YOU CORRECT BROOKINGS' FISCAL YEAR 2011 TERMINATING INTRASTATE SWITCHED ACCESS REVENUES?

A. Since Title 47 CFR §51.909(b)(2)(ii) requires carriers to disaggregate demand by rate element, Brookings should be required to disaggregate the LECA consolidated tariffed $0.125 rate in a manner that permits Brookings to apply only that portion of the rate to wireless MOUs which is permissible under the FCC's orders, rules and regulations and LECA Tariff No. 1.

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[44] Title 47 CFR §51.909(b)(2).

[45] *LECA Responses to AT&T* at response number 1. *Shotwell Direct Testimony* at page 8, lines 16-18.

[46] Title 47 CFR §51.909(b)(2)(ii). (emphasis added) Certainly, the FCC anticipated that any reported revenues, and the underlying rates and demand, would be appropriate and lawful under its orders, rules and regulations.

With respect to wireline MOUs, Brookings is permitted to apply the whole of the LECA consolidated tariffed rate to each MOU. Accordingly, for purposes of calculating the fiscal year 2011 terminating intrastate switched access revenue, Brookings should be allowed to apply the whole of the LECA consolidated tariffed rate to each terminating intrastate wireline MOU.

With respect to wireless MOUs, Brookings is permitted to apply only that portion of the consolidated tariffed rate which covers the services or functionalities which are provided by Brookings and permissible under FCC orders, rules and regulations. Therefore, Brookings is precluded from assessing end office local switching and common line charges on wireless MOUs, leaving only the transport element as applicable to wireless MOUs.[47] Accordingly, for purposes of calculating the fiscal year 2011 terminating intrastate switched access revenue, Brookings should be allowed to apply only the transport portion of the LECA consolidated tariffed rate to each terminating intrastate wireless MOU.[48]

Q. HOW DO YOU DETERMINE THE TRANSPORT PORTION OF THE LECA CONSOLIDATED RATE?

A. As a first measure, AT&T sought guidance from LECA and Brookings as to what portion (i.e., expressed as a percentage or monetary amount) of the LECA intrastate

[47] The Commission should note that Brookings agrees with this conclusion, in principle. <u>See</u>, the *Brookings Worksheet*. Reviewing Line 5 through Line 37 of the worksheet, attached as Bax Responsive Exhibit LJB-1, the Commission will note that Line 7 and Line 43 (i.e., intrastate end office MOUs) include only wireline MOUs. Contrarily, Line 23 and Line 28 (i.e., intrastate transport MOUs) include wireline ***and*** wireless MOUs.

[48] LECA Tariff No. 1 explicitly recognizes this as a feasible scenario. Section 6.8.1(K) states: "For FGD switched access service to a Mobile Telephone Switching Office (MTSO) directly interconnected to a Telephone Company access tandem office, ***the customer will be billed only the Local Transport element*** for the FGD usage." LECA Tariff No. 1 at 1st Revised Page 6-84, attached as Bax Responsive Exhibit LJB-8. (emphasis added)

switched access rate (i.e., $0.125 per MOU) would Brookings attribute to carrier common line, local switching, and other end office charges. In response, LECA and Brookings indicated the LECA consolidated rate "was a negotiated, unified rate that did not break out separate charges for various rate elements such as [common line or end office charges]."[49]

In the absence of guidance from LECA or Brookings,[50] I relied on the historical LECA tariffed switched access rates in effect immediately prior to implementation of the consolidated tariffed rate. Since only intrastate terminating MOUs are at issue in the instant proceeding, I used only the historical intrastate terminating rate elements in my analysis.

Table 3 of Bax Responsive Exhibit LJB-2 details my analysis of the historical LECA rates. Adding the rates from the LECA tariff for carrier common line – terminating, local switching – terminating, and local transport,[51] I determined a total intrastate terminating MOU rate. I then determined the proportionate weight of each element by dividing the element rate by the total rate. As shown on Table 3 of Bax Responsive Exhibit LJB-2, the transport element rate accounted for approximately 27% of the total rate.

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[49] *LECA Supplemental Responses to AT&T* at numbers 8 and 9, attached as Bax Responsive Exhibit LJB-6. The response is contrary to LECA Tariff 1 at Section 6.8.1(K) wherein the tariff requires Brookings to bill only the transport rate element for certain traffic. *See*, Bax Responsive Exhibit LJB-8, attached.

[50] The Commission should note that Brookings has not presented any arguments to date indicating that it is entitled to assess end office local switching or common line charges on wireless traffic. In fact, Brookings has made statements and implemented tariff language to the contrary. Brookings argument to date appears to be that it cannot determine what portion of the unified rate is applicable to wireless traffic. I offer a reasonable methodology for such a determination herein.

[51] *Local Exchange Carrier Association, Inc. Tariff No. 1*, 22nd Revised Page 17-1 and 22nd Revised Page 17-4. LECA and Brookings confirm these are the correct tariff pages. *See*, *LECA supplemental Responses to AT&T* at number 11, attached as Bax Responsive Exhibit LJB-6. The referenced tariff pages are attached as Bax Responsive Exhibit LJB-5.

Subsequently, as detailed in Table 4 of Bax Responsive Exhibit LJB-2, I multiplied the LECA consolidated rate by the transport element weight (i.e., \$0.125 X 26.61%) to produce a *transport-only* view of the LECA consolidated rate applicable to wireless MOUs. The *transport-only* LECA consolidated rate is approximately \$0.033 per MOU.

Q. WHAT ARE THE 2011 FISCAL YEAR INTRASTATE SWITCHED ACCESS REVENUES RESULTING FROM THIS CORRECTION?

A. For the calculation of the appropriate Brookings 2011 Fiscal Year Intrastate Switched Access Revenue I multiplied the LECA consolidated tariffed rate by the 2011 fiscal year wireline MOUs to produce appropriate 2011 fiscal year ***wireline*** revenues. I multiplied the *transport-only* LECA consolidated rate by the wireless MOUs to produce appropriate 2011 fiscal year ***wireless*** revenues. As shown in Table 4 on Bax Responsive Exhibit LJB-2, adding the 2011 fiscal year wireline and the 2011 fiscal year wireless revenues produced by my analysis, I determined that appropriate total fiscal year 2011 intrastate switched access revenues to be **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**.

Q. WHAT IS THE 7/1/12 INTRASTATE TRANSITIONAL RATE RESULTING FROM THE CORRECTION TO THE FISCAL YEAR 2011 TERMINATING INTRASTATE SWITCHED ACCESS REVENUES?

A. As shown in Bax Responsive Exhibit LJB-9, the corrected transition rate is **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**.

V. SUMMARY AND CONCLUSION

Q. PLEASE SUMMARIZE YOUR TESTIMONY?

A. As demonstrated herein, the fiscal year 2011 terminating intrastate switched access revenues reported by Brookings on Line 3 of its worksheet, which serve as the basis for determining the 7/1/12 Intrastate Transitional rate, were inappropriate and required correction to remove end office local switching and common line access revenues associated with intrastate terminating wireless MOUs.

I have provided the Commission with a revised worksheet which corrects the revenues on Line 3 by removing the inappropriate revenues, but leaves the balance of Brookings' assumptions, calculations and methodologies in place.[52]

As the FCC noted in its ICC/USF Order, states play a critical role in the implementation of intrastate access charge reductions to ensure compliance and to prevent actions that would enable a windfall.[53]

The Commission should require Brookings to adopt the corrected worksheet and the 7/1/12 Intrastate Rate produced by the corrected analysis.

DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

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[52] Bax Responsive Exhibit LJB-10 provides the Commission with a "side-by-side" view of the original *Brookings Worksheet* and the corrected view worksheet to facilitate a review of the two worksheets. I have highlighted those numbers which have changed as a result of the corrected view. However, the Commission should note that the only change made was to the revenue number on Line 3, as described and supported herein. Any other changes resulted from the inherent calculations.

[53] FCC *ICC/USF Order* at paragraph 803. _See_, *also*, 47 CFR §51.909(k).