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September 5, 2012

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PUBLIC SERVICE  
COMMISSION

**VIA OVERNIGHT MAIL**

Mr. Jeff Derouen  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602

Re: YMax Communications Corp. Revision to Kentucky Tariff No. 2,  
Switched Access Services  
PSC 2012-00257

Dear Mr. Derouen:

Enclosed for filing in the above-referenced matter are the original and ten (10) copies of AT&T's Response to YMax Communications Corp.'s Notice of Withdrawal and Motion to Close Proceeding.

Please let me know if you have any questions.

Sincerely,

  
Mary K. Keyer

Enclosures

cc: Parties of Record

1045269

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

YMAX COMMUNICATIONS CORP.	)	
REVISION TO KENTUCKY TARIFF NO. 2	)	CASE NO. 2012-00257
SWITCHED ACCESS SERVICES	)	

**AT&T'S RESPONSE TO YMAX COMMUNICATIONS CORP.'S  
NOTICE OF WITHDRAWAL AND MOTION TO CLOSE PROCEEDING**

AT&T<sup>1</sup> files the following response to YMax Communications Corp.'s ("YMax") letter filed August 23, 2012, notifying the Kentucky Public Service Commission ("Commission") of its Withdrawal of Revisions to Kentucky Tariff No. 2 (Switched Access Services), and its Motion to Close Proceeding filed on August 28, 2012. AT&T does not object to either with the clear understanding that if, and to the extent, YMax continues to tariff and bill AT&T in Kentucky for end office switching services that YMax does not actually provide, AT&T will not pay for such services and will continue to have a dispute regarding YMax's tariffs and charges for end office switching services on VoIP-PSTN traffic.

For the reasons previously stated by AT&T in its Motion for Leave to Intervene, to Suspend, and to Investigate Tariff filed on June 15, 2012, YMax's revisions to its Kentucky Tariff No. 2 filed on June 1, 2012, are unlawful and inconsistent with the rules and policies of this Commission and the Federal Communications Commission ("FCC"). In essence, the FCC has made numerous, detailed factual findings – which remain

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<sup>1</sup> BellSouth Telecommunications, LLC d/b/a AT&T Kentucky, AT&T Communications of the South Central States, LLC, and TCG Ohio (collectively "AT&T").

binding on YMax – that YMax does not operate any facilities that are connected to lines that deliver VoIP-PSTN traffic to any individual caller’s home or business. *YMax Order*, 26 FCC Rcd. 5742, ¶¶ 3-9, 14, 19, 38-45 (rel. Apr. 8, 2011). These findings compel the conclusion that, under the FCC’s clear rules, YMax does not provide end office switching and thus cannot bill AT&T for those services. *Id.* at ¶¶ 40-41; *see also Connect America Order*, 26 FCC Rcd. 17663, ¶ 970 (rel. Nov. 8, 2011). The FCC, after making these findings and establishing these rules, also flatly rejected YMax’s proposal to “clarify” the FCC’s rules to allow YMax to impose end office switching rates even though other internet service providers, and not YMax, actually perform the work of delivering the traffic to callers’ homes and businesses. *YMax Clarification Order*, 27 FCC Rcd. 2142, ¶¶ 4-5 (rel. Feb. 27, 2012).

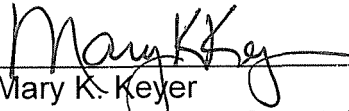
Given these *three* unambiguous orders from the FCC, AT&T was dismayed to learn that here in Kentucky and in other states, YMax is continuing to take the position that it does provide end office switching and that the FCC’s rules permit YMax to tariff rates for those services and bill AT&T for them. AT&T protested YMax’s tariff revisions because this Commission has the authority and duty to ensure that YMax’s tariffs, as YMax interprets them, are reasonable and consistent with governing law, specifically the FCC’s rules and orders discussed above. AT&T remains confident that if YMax had continued to defend its tariff revisions, the Commission would ultimately have agreed with AT&T’s position that the revisions were unlawful.

While AT&T expects YMax is going to continue to charge and bill AT&T for services it does not perform, including end office switching on VoIP-PSTN traffic, because AT&T wishes to conserve its resources and those of the Commission, AT&T

will not oppose YMax's withdrawal of the revised tariffs or the closing of this proceeding. AT&T does, however, want to make it clearly understood to the Commission and to YMax that AT&T (i) continues to have substantial and valid concerns regarding the legality of YMax's existing access tariffs regarding (or applied to) VoIP-PSTN traffic; (ii) contends that the end office switching charges that YMax has consistently billed to AT&T for several years (and apparently will continue to bill to AT&T) are flatly inconsistent with both YMax's switched access tariffs and with the orders and rules of the FCC referenced herein; and (iii) intends to continue to dispute and withhold payment of any unlawful YMax switched access charges on those grounds, *i.e.*, that YMax is billing those charges in violation of its tariffs and of FCC rules and orders.

In conclusion, because YMax refuses to accept the clear rulings of the FCC, AT&T and YMax continue to have a dispute regarding YMax's tariffs and charges for end office switching services on VoIP-PSTN traffic. This case could have served as an appropriate vehicle to resolve this dispute efficiently and promptly, ultimately conserving the resources of the parties. Because YMax has provided notice that it is withdrawing the tariff revisions, however, the dispute will continue as long as YMax continues to take the position that it can tariff and bill AT&T for end office switching services that YMax does not actually provide. If the parties cannot resolve this dispute, they may very well be back before the Commission at some point in the near future. Thus, notwithstanding YMax's withdrawal of revisions to its Tariff No. 2 and the closure of this docket, AT&T will continue to object to any effort on the part of YMax to bill AT&T with end-office switching charges and will avail itself of all remedies available.

Respectfully submitted,



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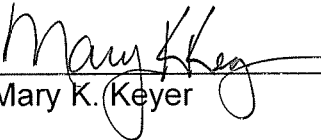
CERTIFICATE OF SERVICE – PSC 2012-00257

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof via U.S. Mail, this 5th day of September 2012.

Honorable Douglas F. Brent  
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