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December 21, 2012

VIA OVERNIGHT MAIL

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

RECEIVED

DEC 26 2012

PUBLIC SERVICE
COMMISSION

Re: Petition of Cumberland Cellular, Inc. d/b/a Duo County Telecom for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996
PSC 2012-00529

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case are the original and ten (10) copies of AT&T Kentucky's Motion to Dismiss Improperly Joined Claim for Compensation for Interim Services and AT&T Kentucky's Response to Duo County's Petition for Arbitration.

Please let me know if you have any questions.

Sincerely,



Mary K. Keyer

Enclosures

cc: Party of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

DEC 26 2012

PUBLIC SERVICE
COMMISSION

In the Matter of:

Petition of Cumberland Cellular, Inc. d/b/a)
Duo County Telecom for Arbitration of)
Certain Terms and Conditions of Proposed)
Interconnection Agreement with BellSouth)
Telecommunications, Inc., d/b/a AT&T)
Kentucky, Pursuant to the Communications)
Act of 1934, as Amended by the)
Telecommunications Act of 1996)

Case No. 2012-00529

**AT&T KENTUCKY'S MOTION TO DISMISS IMPROPERLY JOINED
CLAIM FOR COMPENSATION FOR INTERIM SERVICES**

BellSouth Telecommunications, LLC d/b/a AT&T Kentucky ("AT&T Kentucky") respectfully moves the Public Service Commission of Kentucky ("Commission") to dismiss from this arbitration proceeding under the federal Telecommunications Act of 1996 ("1996 Act") the claim for compensation for "interim services" that Petitioner Cumberland Cellular, Inc. d/b/a Duo County Telecom ("Duo") improperly included in its Petition for Arbitration of the interconnection agreement ("ICA") that will govern the parties' dealings with each other starting on the Effective Date of the ICA (the "Petition"). As demonstrated below, a claim for compensation for services allegedly performed and billed for in the past is not subject to arbitration under the 1996 Act. In addition, the procedures that apply to such a claim under 807 KAR 5:001 are different from, and incompatible with, the procedures for arbitrating an ICA that are mandated by

the 1996 Act. Moreover, Duo's pleading does not establish a prima facie case with respect to the compensation claim, as it must under the applicable administrative regulations.

Duo is free to pursue its claim for interim compensation, but not in this docket. The Commission should dismiss that claim, and Duo may then refile it as a formal complaint pursuant to 807 KAR 5:001, Section 12. If Duo does so, the Commission should then determine whether the formal complaint establishes a prima facie case, as required by Section 12(4), and proceed accordingly.

Background

The 1996 Act requires AT&T Kentucky to negotiate an ICA upon request. 47 U.S.C. § 252(c)(1). Duo requested that AT&T Kentucky do so, and the parties negotiated. Petition ¶¶ 6, 10, 11. The parties did not arrive at a complete agreement, however.

As Duo correctly states in the Petition (at ¶ 5), Section 252(b) of the 1996 Act authorizes either party to an ICA negotiation to petition the state commission for arbitration during the period between the 135th day and the 160th day after the incumbent local exchange carrier ("ILEC") received the request to negotiate. With that "arbitration window" set to close on November 30, 2012 (Petition ¶ 6), Duo timely filed its Petition on that date.

The Petition includes two sub-headings under the heading "Arbitration Issues": "A. Negotiation of Proposed Interconnection Agreement" (Petition at 4), and "B. Request for Compensation for Interim Services" (*id.* at 6). In the first of these two distinct subsections, Duo states (at ¶ 16) that it has attached to the Petition as Exhibit 2 an issues

matrix identifying the issues in dispute concerning the proposed ICA. That issues matrix indeed identifies four open issues from the parties' negotiation of terms and conditions for the ICA (displayed as Issues 2-5) that are properly before the Commission for arbitration under Section 252(b) of the 1996 Act. It also sets forth (as Issue 1) Duo's claim for retroactive compensation for the period ending on the Effective Date of the ICA. That claim, as explained below, is not an open issue subject to arbitration under Section 252(b); rather, it is, as Duo's sub-heading B. correctly recognizes, a separate and distinct "Request for Compensation for Interim Services," and must be pursued, if at all, in a separate docket.

ARGUMENT

I. DUO'S CLAIM FOR COMPENSATION FOR INTERIM SERVICES IS NOT SUBJECT TO ARBITRATION UNDER THE 1996 ACT.

Section 252(b)(1) of the 1996 Act authorizes a party to an interconnection agreement negotiation to petition for arbitration of "any open issue."¹ Needless to say, "any open issue" is not unbounded; Duo could not, for example, ask the Commission to arbitrate under the 1996 Act the price Duo should pay AT&T Kentucky for used computer parts Duo might want to buy from AT&T Kentucky, because the 1996 Act has nothing to do with prices for used computer parts. In order to determine what Section 252(b)(1) means by "any open issue," one must look at the statutory language in context.

¹ Section 252(b)(1) provides: "During the period from the 135th day to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate *any open issues.*" 47 U.S.C. § 252(b)(1) (emphasis added).

The starting point is Section 251. Subsection 251(b) imposes on local exchange carriers (including AT&T Kentucky) duties among which are the duties to provide dialing parity and access to rights of way, and to establish reciprocal compensation arrangements.² Subsection 251(c) imposes additional duties on ILECs (again including AT&T Kentucky). These include the duty to provide interconnection, access to unbundled network elements (“UNEs”), services for resale, and collocation.³ In addition, and significantly here, Section 251(c)(1) requires ILECs to “negotiate in good faith in accordance with section 252 ***the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection.***”⁴ Thus, the ILEC must negotiate terms and conditions for the provision of interconnection, UNEs, and so on, but the ILEC has no duty to negotiate anything other than terms and conditions to fulfill the duties enumerated in Sections 251(b) and 251(c).

The ILEC’s duty to negotiate is triggered by a request for negotiation.⁵ If negotiation does not yield a complete agreement, either party may, during the prescribed period, petition the state commission “to arbitrate any open issues.”⁶ The context makes the scope of those “open issues” clear. An open issue is a disagreement arising out of the parties’ negotiations of “the particular terms and conditions of” an agreement “to fulfill the duties described in” Sections 251(b) and 251(c). Thus, for example, a disagreement about what price the ILEC should charge the requesting

² 47 U.S.C. § 251(b)(1) through (5).

³ 47 U.S.C. § 251(c)(2), (3), (4) and (6).

⁴ 47 U.S.C. § 251(c)(1).

⁵ 47 U.S.C. § 252(a).

⁶ 47 U.S.C. § 252(b)(1).

carrier for used computer parts cannot be an “open issue” subject to arbitration under the 1996 Act, because it is not a disagreement about terms and conditions to fulfill the duties set forth in Sections 251(b) and 251(c), neither of which governs the price of used computer parts.

The same is true of Duo’s claim for compensation for services allegedly performed before the parties’ ICA goes into effect. What Duo seeks in that claim is not governed by Section 251(b) or Section 251(c), and therefore is not subject to arbitration under Section 252(b). This is true for two reasons. First, retroactive compensation for the period before an interconnection agreement goes into effect is not, by definition, a term or condition for the fulfillment of any duty imposed by the 1996 Act, and is not a proper subject for an ICA, the purpose of which is to govern the parties’ conduct starting on the Effective Date of the ICA. Differently stated, the duties imposed by the 1996 Act are, by their very nature, duties that govern the parties’ business relations *going forward*.

Second, Duo’s Petition makes clear that its claim for compensation for interim services is not based on anything that the 1996 Act requires of AT&T Kentucky. Duo’s Petition alleges (in ¶ 15):

Duo County has been furnishing interim services to AT&T (***and billing AT&T for those interim services***) since January 24, 2008 AT&T still has not paid for these services ***at the applicable billed tariff rates***. Accordingly and for purposes of clarity, pursuant to KRS 278.030, ***the filed rate doctrine*** as contained in KRS 278.160, and other applicable state and federal law, Duo County demands compensation for the interim services provided to AT&T for the period between January 24, 2008 and the date of the Commission’s approval of the proposed interconnection agreement. (Emphasis added.)

If Duo has been billing AT&T Kentucky for interim services as Duo alleges, those bills are not pursuant to any obligation AT&T Kentucky has under the 1996 Act, because Duo and AT&T Kentucky have no ICA. And indeed, Duo asserts that it is owed compensation not pursuant to anything in the 1996 Act, but pursuant to Duo's tariff under the filed rate doctrine.

In sum, Duo's compensation claim is not subject to arbitration under Section 252(b) of the 1996 Act both because the claim is not a disagreement about the terms and conditions that will govern the parties' relations under the interconnection agreement Duo has asked the Commission to arbitrate, and because the claim, on its face, is not based on any duty imposed by the 1996 Act, but rather is based on Duo's tariff, which is not a creature of the 1996 Act.

II. AS A PRACTICAL MATTER, DUO'S COMPENSATION CLAIM CANNOT BE LITIGATED IN THE SAME DOCKET AS ITS PETITION FOR ARBITRATION.

Duo's compensation claim, while not subject to arbitration under the 1996 Act, is a proper subject for a formal complaint pursuant to 807 KAR 5:001, Section 12. And the procedural rules that apply to a formal complaint (and that must be applied to Duo's compensation claim) are different from, and incompatible with, procedures that Congress established for ICA arbitrations under Section 252(b). In particular:

1. Under the 1996 Act, AT&T Kentucky must file its response to the petition for arbitration, if any, "within 25 days after the State commission receives the petition."⁷ Under Section 12(4)(b) of 807 KAR 5:0001, in contrast, the Commission must first determine whether Duo has established a prima facie case for its interim compensation

⁷ 47 U.S.C. § 252(b)(3).

claim; if the Commission determines Duo has done so, it may then require AT&T Kentucky to answer the complaint within 10 days of service of the Commission's order so finding. As discussed in Section III below, the Commission should not allow Duo to evade the requirement that its initial pleading establish a prima facie case for its compensation claim by inserting that claim into its arbitration petition.

2. Under the 1996 Act, the Commission must resolve the arbitration issues “not later than nine months after the date on which [AT&T Kentucky] received the request [to negotiate] under this section.”⁸ In a formal complaint proceeding under Section 12, in contrast, the Commission is subject to no such constraint.

3. Under the standards for arbitration in Section 252(c) of the 1996 Act, the Commission must ensure that its resolutions of the open issues in an arbitration “meet the requirements of section 251, including the regulations prescribed by the [Federal Communications] Commission pursuant to section 251.”⁹ But it would not be possible for the Commission to resolve Duo's compensation claim in a manner that meets the requirements of section 251, because the compensation claim, as demonstrated above, is not based on section 251. In a formal complaint case under Section 12, the Commission would face no such obstacle.

Thus, inclusion of the compensation claim in this arbitration proceeding not only would be contrary to law because the claim is not subject to arbitration under the 1996 Act, but would also introduce untenable complexities into the proceeding.

⁸ 47 U.S.C. § 252(b)(4)(C).

⁹ 47 U.S.C. § 252(c)(1).

III. DUO HAS FAILED TO ESTABLISH A PRIMA FACIE CASE FOR ITS INTERIM COMPENSATION CLAIM.

Section 12(4)(a) of 807 KAR 5:0001 provides:

Upon the filing of such [formal] complaint, the commission will immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this administrative regulation. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this administrative regulation, it will notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within such time or such extension thereof as the commission, for good cause shown, may grant, it will be dismissed.

Plainly, Duo's interim compensation claim should be subject to that rule; Duo should not be permitted to do an end run around the requirement that it establish a prima facie case in its initial pleading by the transparent device of casting what should be a formal complaint as an issue for arbitration.

Just as plainly, Duo has not established a prima facie case for its compensation claim. "A complaint establishes a prima facie case when, on its face, it states sufficient allegations that, if uncontradicted by other evidence, would entitle the complainant to the requested relief."¹⁰ In determining whether a complaint meets that test, the Commission does not accept as sufficient mere conclusory and unsupported allegations such as Duo's sketchy allegations in paragraph 15 of the Petition, which is all Duo offers in support of its claim.

In one recent case, for example, the Commission found that a complaint did not establish a prima facie case because its allegations were general and the complaint did

¹⁰ Opinion, Case No. 2011-00211, *Clayton v. Louisville Gas & Elec. Co.* (July 15, 2011).

“not describe with sufficient specificity the Complainant’s grievances . . . in order for the Commission to determine, pursuant to 807 KAR 5:001, Section 12(4)(a), whether it establishes a prima facie case.”¹¹ The Commission concluded that the “Complainant has not cited any specific provision of Shelby Energy’s tariff that he believes Shelby Energy has violated.”¹² The Commission allowed the Complainant to file an amended complaint, but required that it “state fully, clearly and with reasonable certainty the acts or things allegedly done or omitted by the Defendant,” and that it include “a detailed description of how each document attached to the [original] Complaint supports the allegations made in the Complaint.”¹³

In another case in which the Commission found that a complaint failed to establish a prima facie case, the Commission stated,

When reviewing complaints, the Commission seeks both substantive argument and evidence supporting the complaining party's allegations. In this complaint, [Complainant] provides no references to specific portions of [Defendant's] tariffs, special contracts, or interconnection agreements to support the allegation that [Complainant] is being billed inaccurately. [Complainant] has not provided copies of any billing statements, the December 5, 2007 disconnection notice, or e-mail documentation between [the parties] wherein the billing dispute is addressed.¹⁴

Under these standards, Duo’s bare-bones assertion of its claim for compensation comes nowhere close to establishing a prima facie case. The Petition alleges (at ¶ 15)

¹¹ Opinion, Case No. 2011-00041, *Pippin v. Shelby Energy Coop.* (Feb. 10, 2011).

¹² *Id.*

¹³ *Id.*

¹⁴ Order, Case No. 2008-00126, *South Central Telcom, LLC v. Windstream Kentucky East, Inc.* (April 17, 2008).

that Duo has been “furnishing interim services” to AT&T Kentucky, but does not say what those services were. The Petition alleges that Duo has billed AT&T Kentucky for the unidentified services (*id.*), but provides no detail about the alleged billings beyond that, and no copy of any bill. The Petition alleges that it is entitled to compensation (*id.*), but does not say how much. The Petition alleges that Duo is entitled to be paid at the “applicable billed tariff rates” (*id.*) but does not identify the tariff, or the rates, or where in the tariff the rates can be found. In short, the Petition includes virtually no “substantive argument and evidence” of the sort that the Commission seeks.

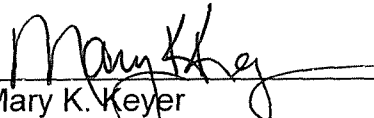
Duo may contend that it was not required to establish a prima facie case because it did not file a formal complaint under 807 KAR 5:001, Section 12. But that is precisely why (in addition to the reasons discussed in sections I and II above) the compensation claim should be dismissed from this case – so that Duo can, if it so chooses, file a formal complaint. The administrative regulations contemplate that a party with a claim like Duo’s compensation claim must establish a prima facie case in its initial pleading in order to proceed, and Duo should not be allowed to avoid that requirement by disguising what is plainly a complaint as an arbitration issue.

CONCLUSION

Duo’s claim for compensation for interim services should be dismissed. As a matter of law, the claim is not subject to arbitration under Section 252(b) of the Telecommunications Act of 1996, because it is not a disagreement about the terms and conditions under which the parties will deal with each other under the interconnection agreement Duo has asked the Commission to arbitrate. In addition, inclusion of the

compensation claim in this arbitration proceeding would create unwanted complexities because of the differences between the procedural rules that govern interconnection agreement arbitrations and the procedural rules that govern complaints. Finally, Duo should not be permitted to proceed unless it can file a complaint that establishes a prima facie case that it is entitled to the relief it seeks, and the only practicable way to accommodate that requirement is to dismiss the claim and let Duo file a formal complaint under 807 KAR 5:001, Section 12, if it so desires.

Respectfully submitted,



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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Petition of Cumberland Cellular, Inc. d/b/a)	
Duo County Telecom for Arbitration of)	
Certain Terms and Conditions of Proposed)	
Interconnection Agreement with BellSouth)	Case No. 2012-00529
Telecommunications, Inc., d/b/a AT&T)	
Kentucky, Pursuant to the Communications)	
Act of 1934, as Amended by the)	
Telecommunications Act of 1996)	

**AT&T KENTUCKY'S RESPONSE TO
DUO COUNTY'S PETITION FOR ARBITRATION**

BellSouth Telecommunications, LLC d/b/a AT&T Kentucky ("AT&T Kentucky"), in accordance with Section 252 of the federal Telecommunications Act of 1996 ("the Act"), hereby responds to the Petition for Arbitration ("Petition") filed herein on November 30, 2012, by Cumberland Cellular, Inc. d/b/a Duo County Telecom ("Duo County").

AT&T Kentucky hereafter responds to each numbered paragraph of Duo County's Petition, admitting or denying as appropriate.

PARTIES

1. AT&T Kentucky is without knowledge or information sufficient to admit or deny the allegations in Paragraph 1 of the Petition and, therefore, denies the same.
2. AT&T Kentucky accepts Duo County's designation of its representatives in Paragraph 2 of the Petition, which requires neither an admission nor a denial.

3. AT&T Kentucky admits the allegations in Paragraph 3 of the Petition, except for the last sentence, which states legal conclusions to which a response is not required.

4. AT&T Kentucky denies the allegations in Paragraph 4 of the Petition and states that its representatives in this proceeding are Mary K. Keyer at the address listed in Paragraph 4 and:

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Mayer Brown LLP
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JURISDICTION

5. The allegations in Paragraph 5 of the Petition state legal conclusions to which a response is not required. AT&T Kentucky further states that 47 U.S.C. § 252(b) referred to in Paragraph 5 speaks for itself.

6. AT&T Kentucky admits the allegations in Paragraph 6 of the Petition that the parties agreed that negotiations would be deemed to begin on June 25, 2012, and that the arbitration window would close on November 30, 2012.

7. The first sentence of Paragraph 7 of the Petition states legal conclusions to which a response is not required. AT&T Kentucky admits that the parties agreed to treat negotiations as beginning on June 25, 2012 and that March 25, 2013, would be the 9-month deadline (unless waived by the parties) for Commission decision on arbitration issues.

8. The allegations in Paragraph 8 of the Petition state legal conclusions to which a response is not required. AT&T Kentucky further denies that the cited Kentucky statute is relevant to this arbitration under federal law.

9. The allegations in Paragraph 9 of the Petition state legal conclusions to which a response is not required. AT&T Kentucky further denies that the cited Kentucky statute is relevant to this arbitration under federal law.

ARBITRATION ISSUES

10. AT&T Kentucky admits that further discussion of issues regarding the proposed interconnection agreement may or may not occur and states that the remaining allegations of Paragraph 10 of the Petition regarding Duo County's hopes require no response.

11. AT&T Kentucky denies the allegations in Paragraph 11 of the Petition. Responding further, AT&T Kentucky states that Duo County cannot reserve the right to unilaterally add or modify issues during the case. Rather, Duo County must identify in its Petition all issues on which it seeks arbitration, and the Commission's authority is limited to resolving issues identified in the Petition and in AT&T Kentucky's Response to the Petition.

12. AT&T Kentucky states that Section 252 of the Act as referenced in Paragraph 12 of the Petition speaks for itself and requires no response. AT&T Kentucky admits the allegation in Paragraph 12 that Duo County has attached to the Petition a document (Exhibit 1) that Duo County calls a "composite" interconnection agreement and that the ICA language in dispute is identified in that document.

13. AT&T Kentucky admits that Duo County attached as Exhibit 2 to its Petition an issues matrix as indicated in Paragraph 13 of the Petition. AT&T Kentucky denies that Exhibit 2 accurately reflects the issues for arbitration and AT&T Kentucky's positions regarding the issues. Accordingly, AT&T Kentucky submits its own issues list for arbitration, and its initial position statements, in the attached **Exhibit A**. Among other things, AT&T Kentucky's Exhibit A removes Duo County Issue 1 for the reasons stated in paragraph 15 below and in AT&T Kentucky's separate motion, and adds several sub-issues to Duo County Issue 4 (now Issue 3 on Exhibit A).¹

14. AT&T Kentucky admits the allegations in Paragraph 14 of the Petition that Duo County provided it with a copy of the Petition and Exhibits on the day the Petition was filed with the Commission.

15. The allegations in Paragraph 15 of the Petition are outside the scope of a proper arbitration proceeding or Petition under Section 252 of the federal Telecommunications Act of 1996 and do not identify or discuss any issue for arbitration in the formation of an interconnection agreement, and, therefore, no response is required. AT&T Kentucky denies that it owes Duo County anything for the alleged "interim services," and states that any dispute regarding such services is beyond the scope of this arbitration and could only be addressed in a separate proceeding. AT&T Kentucky has filed a separate motion to dismiss from this arbitration the matter addressed in Paragraph 15 of the Petition.

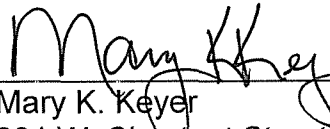
REQUEST FOR RELIEF

AT&T Kentucky denies that Duo County is entitled to any of the relief requested in its Petition, and respectfully requests:

¹ The Parties have resolved and deleted issues related to Sections 6.0 and 6.1 from the Issues Matrix.

- A. that the Commission resolve each outstanding arbitration issue consistent with the position and proposed contract language of AT&T Kentucky;
- B. that the Commission require the Parties to execute and file an interconnection agreement consistent with the rulings of the Commission on each arbitrated issue; and
- C. any and all other relief to which it may be entitled.

Respectfully submitted,



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ATTACHMENT 01

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
1 (Duo Issue 2)	<p>AT&T Issue Statement Should Attachment 1 to the ICA be titled "Non-Competing CLEC Access Only Traffic" or "Non-Competing CLEC Toll Only Traffic"?</p> <p>Duo Issue Statement Should agreements governing intercarrier compensation cover only Toll Traffic or should it cover all Access Traffic?</p>	Title of Attachment 01 - Non-Competing CLEC Toll Only Traffic	Attachment 01 – Non-Competing CLEC Access Only Traffic	Duo County's position is that the terms governing instances where Duo County is not competing with AT&T should apply to all instances where AT&T accesses the Duo County network, and not just in instances involving toll traffic originating from an AT&T End User. Duo County's position is that the Commission order in <i>South Central Telcom, LLC v. Bellsouth Telecommunications, Inc.</i> , Case No. 2006-00448 (P.S.C. June 22, 2010) should govern.	Attachment 01 – Non-Competing CLEC <u>Toll</u> Only Traffic	Attachment 1 should have the word "Toll" in the title, rather than "Access," to accurately reflect the type of traffic covered by Attachment 1. The outcome of this issue will depend on the outcome of AT&T Issues 2 and 3, listed below.
2 (Duo Issue 3)	<p>AT&T Issue Statement Should AT&T Kentucky be required to pay terminating intercarrier compensation to Duo on traffic that does not originate from AT&T Kentucky end user customers and as to which AT&T Kentucky is merely a middleman?</p> <p>Duo Issue Statement Should AT&T be responsible for paying intercarrier compensation for traffic it delivers to Duo County's end users?</p>	1.2 Of Non-Competing CLEC Toll Only Traffic - Attachment 01	1.2 The Intercarrier Compensation provisions of this Attachment apply to Telecommunications intraLATA Toll Traffic originated and terminated between the Parties over each Party's own facilities. This traffic will either (a) originate from CLEC's End User located in another ILEC's incumbent local Exchange Area and terminate to an AT&T Kentucky End User, or (b) be delivered by AT&T for termination to CLEC's End User located in another ILEC's incumbent local Exchange Area.	Duo County's position is that the definition of Intercarrier Compensation should encompass all traffic that is delivered by AT&T to Duo County's End User, and not just traffic originated from an AT&T End User.	1.2 The Intercarrier Compensation provisions of this Attachment apply to Telecommunications intraLATA Toll Traffic originated and terminated between the Parties over each Party's own facilities. This traffic will either (a) originate from CLEC's End User located in another ILEC's incumbent local Exchange Area and terminate to an AT&T Kentucky End User, or (b) originate from an AT&T End User and terminate to CLEC's End User located in another ILEC's incumbent local Exchange Area.	AT&T Kentucky should not be required to pay terminating intercarrier compensation to Duo on traffic that does not originate from AT&T Kentucky end user customers and as to which AT&T Kentucky is merely a middleman (with the exception of when AT&T Kentucky is acting as the Primary Toll Carrier).
3 (Duo)	<p>AT&T Issue Statement (Section 4.4.1) Should the</p>	4.2, 4.4 – 4.6, and 5.0 – 5.4	4.2 <i>Intentionally Left Blank</i>	Yes; Duo County's position is that the terms of the Interconnection	4.2 Primary Toll Carrier Arrangements:	Issue 3 (Section 4.4.1) Duo's IXC tariff does not apply to

Key: Bold/Underline represents language proposed by AT&T KENTUCKY and opposed by CLEC.
Bold/Italics language represents language proposed by CLEC and opposed by AT&T KENTUCKY.

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
Issue 4)	<p>ICA require AT&T Kentucky, an ILEC, to be subject to Duo's tariff for IXCs?</p> <p>Duo Issue Statement Should Duo County's access tariff apply to non-local traffic delivered by AT&T to Duo County's end user(s)?</p> <p>AT&T Issue 3a. (Section 4.2) Should the ICA contain language regarding Primary Toll Carrier Arrangements?</p>	<p>of Non-Competing CLEC Toll Only Traffic - Attachment 01</p>	<p>4.4 Switched Access Traffic Compensation: 4.4.1 CLEC shall bill AT&T Kentucky pursuant to its applicable tariff.</p> <p>4.5 <i>Intentionally Left Blank</i></p> <p>[No Section 4.6]</p> <p>5.0 <i>Reserved for Future Use</i></p> <p>[No Section 5.1, 5.2, 5.3, 5.4, or 6]</p>	<p>Agreement and Duo County's filed tariff should apply in a manner that is consistent with the Commission's order in <i>South Central Telcom, LLC v. Bellsouth Telecommunications, Inc.</i>, Case No. 2006-00448 (P.S.C. June 22, 2010). The additional provisions proposed by AT&T are contradictory and/or superfluous.</p>	<p>4.2.1 A Primary Toll Carrier ("PTC") is a company that provides IntraLATA Toll Traffic service for its own End Users and potentially for a Third Party ILEC's End Users. In this ILEC arrangement, AT&T KENTUCKY, as the PTC receives the Third Party ILEC's End User IntraLATA Toll Traffic revenues and pays the Third Party ILEC for originating these toll calls. AT&T KENTUCKY also pays the terminating switched access charges on behalf of the Third Party ILEC. In AT&T KENTUCKY, wherein Primary Toll Carrier arrangements are mandated and AT&T KENTUCKY is functioning as the PTC for a Third Party ILEC's End Users, the following provisions apply to the IntraLATA Toll Traffic that is subject to the PTC arrangement:</p> <p>4.2.1.1 AT&T KENTUCKY shall deliver such IntraLATA Toll Traffic that originated from that Third Party ILEC and terminated to CLEC as the terminating carrier in accordance with the terms and conditions of such PTC arrangement mandated by the respective state Commission. Where AT&T KENTUCKY is functioning as the PTC for a Third Party ILEC's End Users, the following provisions apply to the minutes of use terminating to CLEC. AT&T KENTUCKY and CLEC will work cooperatively to develop a percentage of the amount of state specific PTC ILEC originated intraLATA toll minutes of use that are within the state specific total ILEC originated minutes of use reflected in the monthly EMI 11-01-01 Records provided to CLEC by AT&T KENTUCKY. CLEC will apply this state specific percentage against the state specific total ILEC originated EMI 111-01-01 minutes of use each month to determine the amount of PTC intraLATA toll minutes of use for which AT&T KENTUCKY will compensate CLEC. Such percentage will be updated no more than twice each year. AT&T KENTUCKY will compensate CLEC for this PTC traffic as it would for AT&T KENTUCKY originated traffic.</p> <p>4.2.1.2 AT&T KENTUCKY shall deliver such IntraLATA toll traffic that originated from CLEC and terminated to</p>	<p>AT&T Kentucky. Rather, intercarrier compensation for IXC switched access traffic should be on a meet-point billing basis (see AT&T Issue 3b).</p> <p>Issue 3a. (Section 4.2) The ICA should contain specific terms for compensation on traffic exchanged between the parties when AT&T Kentucky is the Primary Toll Carrier for third party ILECs.</p>

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
	<p>AT&T Issue 3b. (Section 4.4) Should the ICA contain specific terms regarding Meet Point Billing (MPB) and IXC Switched Access Traffic Compensation?</p>				<p><u>the Third Party ILEC as the terminating carrier in accordance with the terms and conditions of such PTC arrangement mandated by the respective state Commission. CLEC shall pay AT&T KENTUCKY for the use of its facilities at the rates set forth in AT&T KENTUCKY's intrastate access service tariff in the respective state. CLEC shall pay the ILEC directly for the termination of such traffic originated from CLEC.</u></p> <p>4.4 <u>Meet-Point Billing (MPB) and IXC Switched Access Traffic Compensation:</u></p> <p>4.4.1 <u>Intercarrier compensation for IXC Switched Access Traffic shall be on a MPB basis as described below.</u></p> <p>4.4.2 <u>The Parties will establish MPB arrangements in order to jointly provide Switched Access Services via the respective carrier's Tandem Office Switch in accordance with the MPB guidelines contained in the ATIS Ordering and Billing Forum's (OBF) Multiple Exchange Carriers Ordering and Design (MECOD) and Multiple Exchange Carrier Access Billing (MECAB) documents, as amended from time to time.</u></p> <p>4.4.3 <u>Billing for the Switched Exchange Access Services jointly provided by the Parties via MPB arrangements shall be according to the Multiple Bill/Single Tariff method. As described in the MECAB document, each Party will render a bill in accordance with its own tariff for that portion of the service it provides. Each Party will bill its own network access service rates. The Residual Interconnection Charge (RIC), if any, will be billed by the Party providing the End Office function.</u></p> <p>4.4.4 <u>The Parties will maintain provisions in their respective federal and state access tariffs, or provisions within the National Exchange Carrier Association (NECA) Tariff No. 4, or any successor tariff, sufficient to reflect this MPB arrangement, including MPB percentages.</u></p>	<p>Issue 3b. (Section 4.4) The ICA should contain specific terms for compensation of IXC traffic exchanged between the parties when AT&T Kentucky and Duo jointly provide Switched Access Services to IXCs. The parties should conform to the billing parameters consistent with industry standards, i.e., OBF, MECAB, and MECOD.</p>

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
					<p><u>4.4.5</u> As detailed in the MECAB document, the Parties will exchange all information necessary to accurately, reliably and promptly bill third parties for Switched Access Services traffic jointly handled by the Parties via the MPB arrangement, when the Parties do not have all detailed Recordings for billing.</p> <p><u>4.4.5.1</u> The Parties also agree that AT&T KENTUCKY and CLEC will exchange EMI Records when each is acting as the Official Recording Company. As described in the MECAB document, the Official Recording Company for Tandem routed traffic is: (1) the End Office company for originating traffic, (2) the Tandem company for terminating traffic and (3) the SSP company for originating 800 traffic.</p> <p><u>4.4.6</u> Information shall be passed or exchanged in a mutually acceptable electronic file transfer protocol. Where the EMI Records cannot be transferred due to a transmission failure, Records can be provided via a mutually acceptable medium. The provision of AURs to accommodate MPB will be on a reciprocal, no charge basis. Each Party agrees to provide the other Party with AURs based upon mutually agreed upon intervals.</p> <p><u>4.4.7</u> MPB shall also apply to all jointly provided Switched Access minutes of use (MOU) traffic bearing the 900, or toll free NPAs (e.g., 800, 877, 866, 888 NPAs, or any other non-geographic NPAs).</p> <p><u>4.4.7.1</u> CLEC will pay the database query charge set forth in the AT&T KENTUCKY intrastate or interstate access services tariff.</p> <p><u>4.4.8</u> AT&T KENTUCKY and CLEC agree to provide the other Party with notification of any discovered errors in the record exchange process within ten (10) Business Days of the discovery.</p> <p><u>4.4.9</u> In the event of a loss of data, both Parties shall</p>	

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Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
	<p>AT&T Issue 3c. (Section 4.5) Should the ICA contain specific terms for IntraLATA Toll Traffic Compensation?</p> <p>AT&T Issue 3d. (Section 4.5.4) Should the ICA obligate Duo to enter into compensation arrangements with all Third Parties with which Duo</p>				<p><u>cooperate to reconstruct the lost data within sixty (60) calendar days of notification, and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data, based upon no less than three (3) and no more than twelve (12) consecutive months of prior usage data.</u></p> <p>4.5 <u>IntraLATA Toll Traffic Compensation:</u></p> <p>4.5.1 <u>For intrastate IntraLATA Message Telephone Service (MTS) Toll Traffic, compensation for termination of such traffic will be at terminating access rates. For intrastate IntraLATA 8YY service, compensation for termination of such traffic will be at originating access rates, including the Carrier Common Line (CCL) charge where applicable. The appropriate access rates are set forth in each Party's intrastate access service tariff, but such compensation shall not exceed the compensation contained in AT&T KENTUCKY's intrastate tariff.</u></p> <p>4.5.2 <u>For interstate IntraLATA MTS Toll Traffic, if any, compensation for termination of such traffic will be at terminating access rates. For interstate IntraLATA 8YY service, compensation for termination of such traffic will be originating access rates, including the CCL charge where applicable. The appropriate access rates are set forth in each Party's interstate access tariff, but such compensation shall not exceed the compensation contained in the AT&T KENTUCKY's interstate tariff.</u></p> <p>4.5.3 <u>The parties agree to compensate each other for ISP Bound Traffic on a minute of use basis at \$.0007 per minute of use. In the event of a dispute the parties will work collaboratively to identify any ISP Bound Traffic.</u></p> <p>4.5.4 <u>CLEC has the sole obligation to enter into compensation arrangements with all Third Parties with whom CLEC exchanges traffic, including without limitation anywhere CLEC originates traffic to or terminates traffic from an End User being served by a Third Party who has purchased a local switching product from AT&T KENTUCKY on a wholesale basis (non-</u></p>	<p>Issue 3c. (Section 4.5) The ICA should contain specific terms for compensation for IntraLATA Toll traffic and IntraLATA 8YY service exchanged between the parties. This will formalize each party's obligations with respect to toll traffic, thereby minimizing disputes. Although the parties agree to compensate each other for their respective end-users' originated traffic, specific terms need to be included in the ICA.</p> <p>Issue 3d. (Section 4.5.4) Duo should be required to enter into compensation arrangements with all Third Parties with which it exchanges traffic. AT&T Kentucky has no obligation to act as a billing</p>

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Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
	exchanges traffic?				<p><u>resale) that is used by such Third Party to provide wireline local telephone Exchange Service (dial tone) to its End Users. In no event will AT&T KENTUCKY have any liability, financial or otherwise to CLEC or any Third Party for traffic that an AT&T KENTUCKY End User (or an End User of a reseller of AT&T KENTUCKY's local exchange service, or an End User placing an IntraLATA Toll call pursuant to the AT&T KENTUCKY PTC arrangement described in Section 4.2 above) did not originate.</u></p> <p><u>4.5.5 In the event that traffic is exchanged with a Third Party with which CLEC does not have a traffic compensation agreement, CLEC will indemnify, defend and hold harmless AT&T KENTUCKY against any and all losses including without limitation, charges levied by such Third Party. The Third Party and CLEC will bill their respective charges directly to each other. AT&T KENTUCKY will not be required to function as a billing intermediary (e.g. clearinghouse). AT&T KENTUCKY may provide information regarding such traffic to Third Party carriers or entities as appropriate to resolve traffic compensation issues.</u></p> <p><u>4.5.6 To the extent that the Parties are not currently exchanging traffic in a given LATA or local calling area, the Parties' obligation to pay intercarrier compensation to each other shall commence on the date the Parties agree that the interconnection is complete (e.g., each Party has established its originating Trunks) and is capable of fully supporting originating and terminating End User traffic. In addition, the Parties agree that test traffic is not subject to compensation pursuant to this Attachment.</u></p> <p><u>4.5.7 The Parties acknowledge that Section 4.5 above addresses the method of compensation for traffic properly exchanged by the Parties under this Agreement.</u></p>	intermediary between Duo and third party originating carriers.

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Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
	<p>AT&T Issue 3e (Section 4.6) Should the ICA include billing arrangements for termination of IntraLATA Toll Traffic?</p> <p>AT&T Issue 3f (Sections 5.0 through 5.4.5) Should the ICA contain specific terms regarding the parties' obligations to provide Recording, Message Processing and message detail services to each other?</p>				<p>4.6 Billing Arrangements for Termination of IntraLATA Toll Traffic:</p> <p>4.6.1 Each Party, unless otherwise agreed to by the Parties, will calculate terminating interconnection minutes of use based on standard switch Recordings made within terminating carrier's network for IntraLATA Toll Traffic. These Recordings are the basis for each party to generate bills to the other Party.</p> <p>5.0 Recording for IXC AURs and Billable Messages</p> <p>5.1 AT&T KENTUCKY will provide Recording, Message Processing and message detail services to a CLEC. The terms and conditions under this Attachment will also apply when CLEC is the Recording Company.</p> <p>5.2 Responsibilities of the Parties:</p> <p>5.2.1 AT&T KENTUCKY will record all IXC Transported messages for CLEC carried over all Feature Group Switched Access Services that are available to AT&T KENTUCKY provided Recording equipment or operators. Unavailable messages (i.e., certain operator messages that are not accessible by AT&T KENTUCKY provided equipment or operators) will not be recorded. The Recording equipment will be provided at locations selected by AT&T KENTUCKY.</p> <p>5.2.2 AT&T KENTUCKY will perform Assembly and Editing, Message processing and provision of applicable AUR detail for IXC Transported messages if the messages are recorded by AT&T KENTUCKY.</p> <p>5.2.3 AT&T KENTUCKY will provide AURs that are generated by AT&T KENTUCKY.</p> <p>5.2.4 Assembly and Editing will be performed on all IXC transported messages recorded by AT&T KENTUCKY.</p>	<p>Issue 3e (Section 4.6) The ICA should contain specific terms for compensation for IntraLATA Toll traffic and IntraLATA 8YY service exchanged between the parties, in order to formalize each party's obligations with respect to toll traffic.</p> <p>Issue 3f (Sections 5.0 through 5.4.5) The ICA should contain specific terms regarding the exchange of records, because these records provide the detail to enable the parties to render appropriate and accurate bills to the responsible party.</p>

Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
					<p><u>5.2.5 Standard EMI Record formats for the provision of Billable Message detail and AUR detail will be established by AT&T KENTUCKY and provided to CLEC.</u></p> <p><u>5.2.6 Recorded Billable Message detail and AUR detail will not be sorted to furnish detail by specific End Users, by specific groups of End Users, by officer, by feature group or by location.</u></p> <p><u>5.2.7 AT&T KENTUCKY will provide message detail to CLEC in data files, (a File Transfer Protocol or Connect:Direct "NDM"), or any other mutually agreed upon process to receive and deliver messages using software and hardware acceptable by both Parties. In order for CLEC to receive End User billable Records, CLEC may be required to obtain CMDS Hosting service from AT&T or another CMDS Hosting service provider.</u></p> <p><u>5.2.8 AT&T KENTUCKY requires CLEC to obtain a Hosted RAO code to receive AURs and End User billable records.</u></p> <p><u>5.2.9 CLEC will identify separately the location where the Data Transmissions should be sent (as applicable) and the number of times each month the information should be provided. AT&T KENTUCKY reserves the right to limit the frequency of transmission to existing AT&T KENTUCKY processing and work schedules, holidays, etc.</u></p> <p><u>5.2.10 AT&T KENTUCKY will determine the number of data files required to provide the AUR detail to CLEC.</u></p> <p><u>5.2.11 Recorded Billable Message detail and/or AUR detail previously provided CLEC and lost or destroyed through no fault of AT&T KENTUCKY will not be recovered and made available to CLEC except on an individual case basis at a cost determined by AT&T KENTUCKY.</u></p> <p><u>5.2.12 When AT&T KENTUCKY receives rated Billable</u></p>	

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Issue No.	Issue Statement	Section	<i>CLEC Language</i>	CLEC's Position	<u>AT&T Kentucky's Language</u>	<u>AT&T Kentucky's Position</u>
					<p><u>Messages from an IXC or another LEC that are to be billed by CLEC, AT&T KENTUCKY may forward those messages to CLEC.</u></p> <p><u>5.2.13 AT&T KENTUCKY will record the applicable detail necessary to generate AURs and forward them to CLEC for its use in billing access to the IXC.</u></p> <p><u>5.2.14 When CLEC is the Recording Company, CLEC agrees to provide its recorded Billable Messages detail and AUR detail data to AT&T KENTUCKY under the same terms and conditions of this Section.</u></p> <p>5.3 Basis of Compensation:</p> <p><u>5.3.1 AT&T KENTUCKY, as the Recording Company, agrees to provide recording, Assembly and Editing, Message Processing and Provision of Message detail for AURs ordered/required by CLEC in accordance with this Section on a reciprocal, no charge basis. CLEC, as the Recording Company, agrees to provide any and all AURs required by AT&T KENTUCKY on a reciprocal, no charge basis. The Parties agree that this mutual exchange of Records at no charge to either Party shall otherwise be conducted according to the guidelines and specifications contained in the MECAB document.</u></p> <p>5.4 Limitation of Liability</p> <p><u>5.4.1 Except as otherwise provided herein, Limitation of Liability will be governed by the General Terms and Conditions of this Agreement.</u></p> <p><u>5.4.2 Except as otherwise provided herein, neither Party shall be liable to the other for any special, indirect, or consequential damage of any kind whatsoever. A Party shall not be liable for its inability to meet the terms of this Agreement where such inability is caused by failure of the first Party to comply with the obligations stated herein. Each Party is obliged to use its best efforts to mitigate damages.</u></p>	

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Issue No.	Issue Statement	Section	CLEC Language	CLEC's Position	AT&T Kentucky's Language	AT&T Kentucky's Position
					<p><u>5.4.3</u> When either Party is notified that, due to error or omission, incomplete data has been provided to the non-recording Company, each Party will make reasonable efforts to locate and/or recover the data and provide it to the non-Recording company at no additional charge. Such requests to recover the data must be made within sixty (60) calendar days from the date the details initially were made available to the non-Recording Company. If written notification is not received within sixty (60) calendar days, the Recording Company shall have no further obligation to recover the data and shall have no further liability to the non-Recording Company.</p> <p><u>5.4.4</u> If, despite timely notification by the non-Recording Company, message detail is lost and unrecoverable as a direct result of the Recording Company having lost or damaged tapes or incurred system outages while performing recording, Assembly and Editing, rating, Message Processing and/or transmission of message detail, both Parties will estimate the volume of the lost messages and associated revenue based on information available to it concerning the average revenue per minute for the average interstate and/or intrastate call. In such events, the Recording Company's liability shall be limited to the granting of a credit adjusting amounts otherwise due from it equal to the estimated net lost revenue associated with the lost message detail.</p> <p><u>5.4.5</u> Each Party will not be liable for any costs incurred by the other Party when transmitting data files via data lines and a transmission failure results in the non-receipt of data.</p> <p>[NOTE: Duo's Petition listed Sections 6.0 and 6.1 as disputed, but the parties have now agreed to remove those sections.]</p>	

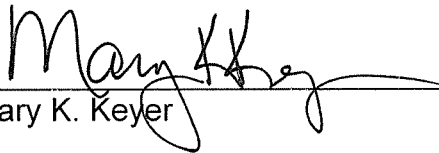
ATTACHMENT 02

Issue No.	Issue Statement	Section	<i>CLEC Language</i>	CLEC's Position	<u>AT&T Kentucky's Language</u>	<u>AT&T Kentucky's Position</u>
4 (Duo Issue 5)	<p><u>AT&T Issue Statement</u> Which carrier should be responsible for uncollectible amounts due from the billing party's end users?</p> <p><u>Duo Issue Statement</u> Who should bear the risk of loss for uncollectible NICS accounts?</p>	3.6 of ABT-Non-Intecompany Settlements - Attachment 02	3.6 <i>The Billing Party will use commercially reasonable efforts to collect messages billed on behalf of the Earning Party. Uncollectible amounts will be the responsibility of the Earning Party, provided, however, that the Billing Party will provide the Earning Party with Information (Billing name and address, etc.) to allow Earning Party to separately pursue collections of unpaid charges. Such uncollected amounts will be returned to Billing Party.</i>	Duo County's position is that, though a party may actually be billing individuals for the interconnection services that are rendered through the network on behalf of the earning party, the earning party is the individual benefiting from the customer's use of the network; therefore, the earning party should bear the risk of uncollectible accounts as to its own customers. In this manner, the risk of loss is not foisted upon the party with no expectation of gain.	3.6 <u>The Party billing the End User shall be responsible for all uncollectible amounts.</u>	Consistent with the established industry practice regarding calls carried by LECs, the Party billing an end user should bear the risk of any uncollectible amounts due from that end user.

CERTIFICATE OF SERVICE – PSC 2012-00529

I hereby certify that a copy of the foregoing was served on the following individual by mailing a copy thereof via U.S. Mail, this 21st day of December 2012.

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