

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF BELLSOUTH	)	
TELECOMMUNICATIONS, INC. TO ESTABLISH	)	CASE NO.
GENERIC DOCKET TO CONSIDER	)	2004-00427
AMENDMENTS TO INTERCONNECTION	)	
AGREEMENTS RESULTING FROM CHANGES	)	
OF LAW	)	

O R D E R

On January 2, 2008, BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (“AT&T Kentucky”) filed a motion for reconsideration and clarification of three issues contained in the Commission’s December 12, 2007 Order. AT&T Kentucky has asked the Commission to reconsider Issue 14, regarding the scope of commingling allowed under the Federal Communications Commission’s (“FCC”) rules. AT&T Kentucky has also asked the Commission to reconsider ordering paragraph 4, requiring parties to submit pricing true-up disputes within 45 days of the December 12, 2007 Order. Also, AT&T Kentucky has asked the Commission to clarify its approval of AT&T Kentucky’s unimpaired wire center list contained in Issue 5.

Competitive Carriers of the South, Inc. (“CompSouth”) has objected to two of AT&T Kentucky’s requests for reconsideration or clarification. CompSouth contends that the Commission’s commingling discussion is correct and should not be reheard. CompSouth also argues that Issue 5, regarding unimpaired wire centers, should not be

altered. CompSouth, however, took no position regarding AT&T Kentucky's third request for the 45-day period in which to submit true-up disputes.

SouthEast Telephone, Inc. ("SouthEast") has objected to AT&T Kentucky's request for reconsideration of one issue, Issue 14, regarding commingling.

ISSUE 14: WHAT IS THE SCOPE OF COMMINGLING  
ALLOWED UNDER THE FCC'S RULES, AND WHAT  
LANGUAGE SHOULD BE INCLUDED IN THE INTERCONNECTION  
AGREEMENTS TO IMPLEMENT COMMINGLING?

AT&T Kentucky has asked the Commission to reconsider its ruling contained on pages 12-16 of the December 12, 2007 Order. In support of its request, AT&T Kentucky points to a recent decision by another jurisdiction, the Tennessee Regulatory Authority, which ruled in favor of AT&T Kentucky on a similar matter. However, AT&T Kentucky also admitted that the United States District Court for the Northern District of Florida issued a decision in June 2007 which supported the Commission's legal determinations regarding commingling. The Commission has reviewed AT&T Kentucky's request and the responses by CompSouth and SouthEast. AT&T Kentucky has presented no new arguments or evidence which were not previously considered by the Commission. Accordingly, the standards required by KRS 278.400 have not been met, and rehearing of Issue 14 is denied.

ISSUE 5: DOES THE COMMISSION HAVE AUTHORITY  
TO DETERMINE WHETHER AT&T KENTUCKY'S  
APPLICATION OF THE FCC'S 47 U.S.C. § 251  
NON-IMPAIRMENT CRITERIA FOR HIGH-CAPACITY  
LOOPS AND TRANSPORT IS APPROPRIATE?

AT&T Kentucky seeks clarification of the Commission's determination related to the designation of wire centers as impaired pursuant to criteria established in the FCC's

TRRO<sup>1</sup> and further modified by the merger commitments<sup>2</sup> accepted by the FCC. AT&T Kentucky references a listing of unimpaired wire centers for Kentucky supplied as part of its post-hearing brief on November 22, 2005. AT&T Kentucky advises that, as a result of the merger commitments, the status of one wire center, LSVLKYAP (Louisville-Armory Place), was modified to include impairment for DS-3 loops. AT&T Kentucky requests that the Commission concur in its designation of impaired wire centers noted in its November 22, 2005 brief for the period of March 11, 2005 to December 29, 2006 and as modified by the merger commitments after December 29, 2006. AT&T Kentucky asserts that this clarification is necessary to avoid any doubt regarding the status of the affected wire centers and the resulting availability of unbundled network elements (“UNEs”).

CompSouth responded to AT&T Kentucky’s motion for clarification and advised the Commission that the request should be rejected. CompSouth asserts that AT&T Kentucky is attempting to nullify the effect of the merger commitments. CompSouth claims that if the Commission accepts AT&T Kentucky’s basis for clarification, AT&T Kentucky may attempt to backbill CLECs for DS-3 loops during the period from March 11, 2005 to December 29, 2006 and might further attempt to readjust the wire center designations back to their pre-merger status. CompSouth believes that the merger commitments cannot be applied solely on a prospective basis as implied by

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<sup>1</sup> Order on Remand, FCC 04-290, February 4, 2005.

<sup>2</sup> In the Matter of AT&T Inc., and Bellsouth Corporation Application to Transfer of Control, FCC WC Docket No. 06-74, Appendix F, Order dated March 26, 2007.

AT&T Kentucky but rather should be considered in concert with the impairment criteria established by the FCC in the TRRO.

The Commission finds that AT&T Kentucky's motion for clarification, as specifically requested, should be denied. As previously noted by the Commission,<sup>3</sup> the FCC has clearly afforded CLECs the opportunity to contest an incumbent local exchange carrier's count of fiber-based collocators and, therefore, challenge the appropriateness of a wire center's designation as unimpaired during a 47 U.S.C. § 252 proceeding. In its motion, AT&T Kentucky has not identified an immediate point of contention or potential for dispute but rather generally asserts that clarification is needed "for the avoidance of any doubt." Similarly, CompSouth can only speculate on how the clarification sought by AT&T Kentucky might impact interconnection arrangements either prior to December 29, 2006 or thereafter. The FCC has established criteria for determining the impairment of a wire center as it relates to specific unbundling requirements.<sup>4</sup> The FCC has also accepted AT&T Kentucky's commitment to adjust calculations and account for those wire centers that should no longer be designated as unimpaired as a result of the merger of BellSouth and AT&T. The Commission will adhere to the FCC's guidance and preserve its authority to address any specific disputes surrounding the availability of UNEs during a 47 U.S.C. § 252 proceeding.

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<sup>3</sup> Commission Order dated December 12, 2007 at 32-33.

<sup>4</sup> 47 CFR § 51.319.

#### CLARIFICATION OF ORDERING PARAGRAPH 4

AT&T Kentucky requests that the Commission eliminate the requirement that parties submit any disputes regarding the implementation of pricing determination true-ups within 45 days of the December 12, 2007 Order. AT&T Kentucky contends that 45 days is an insufficient period of time in which to negotiate and execute amendments and incorporate the Commission's rulings into interconnection agreements. Moreover, AT&T Kentucky argues that it is only after the execution of such amendments that AT&T Kentucky and the CLECs will know whether they have disputes regarding true-ups. AT&T Kentucky suggests that the parties may request that the Commission resolve such disputes whenever they arise without a specific time limitation.

No party has contested AT&T Kentucky's request that this deadline be eliminated. The Commission finds that elimination of the 45-day deadline is reasonable. Accordingly, ordering paragraph 4 of the December 12, 2007 Order is amended as follows:

After reasonable good faith efforts to resolve pricing disputes, parties shall submit for Commission review any disputes regarding the implementation of pricing determination true-ups.

IT IS THEREFORE ORDERED that:

1. AT&T Kentucky's request to rehear Issue 14 regarding commingling is hereby denied.
2. AT&T Kentucky's request to clarify the list of unimpaired wire centers, contained in Issue 5, is hereby denied as specified herein.
3. AT&T Kentucky's request to reconsider the time in which parties may submit pricing true-up disputes is granted as specified herein.

4. This is a final and appealable Order.

Done at Frankfort, Kentucky, this 18<sup>th</sup> day of January, 2008.

By the Commission

Commissioner Clark Abstains.

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Executive Director