

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

An Investigation into the Intrastate)
Switched Access Rates of All Kentucky)
Incumbent and Competitive Local)
Exchange Carriers)

Administrative Case: 2010-00398

SE Acquisitions, LLC d/b/a SouthEast Telephone's Comments on AT&T's Plan

SE Acquisitions, LLC d/b/a SouthEast Telephone ("SouthEast") through undersigned counsel, hereby submits its feedback on AT&T's Plan for Kentucky Switched Access Reform as submitted as Exhibit F to AT&T's Petition and Complaint on April 21, 2010. SouthEast submits that AT&T's Petition is a veiled effort by the dominant carrier in Kentucky to gain a reallocation of significant monies from its competition, which will have an adverse effect on the consumers of Kentucky. Therefore, SouthEast will highlight several critical facts that justify a rejection of the proposal being advanced by AT&T. These can be summarized as follows:

- The Federal Communications Commission ("FCC") is taking a serious look at a comprehensive overhaul of the access charge regime. Therefore, the Kentucky Public Service Commission ("PSC") should wait to see what results before taking any action;
- AT&T's proposal does not provide enough time for the PSC to examine the costs of Kentucky CLECs. SouthEast contends that any reduction unsupported by thorough cost studies would be illegal and confiscatory;
- AT&T's proposal provides that a Kentucky Universal Service Fund ("KUSF") be established which will require CLECs to contribute to the fund, but will not allow for CLEC distribution from the fund;

- AT&T's proposal does not take into account those rural telecommunications service providers that qualify for the "rural exemption;" and
- Should the PSC determine that some reduction is appropriate, they should examine other options that will better balance all of the parties' rights and better serve the public interest.

I. The PSC should wait for the FCC to make its decision on Access Reform.

On February 8, 2011, the FCC adopted the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking ("NPRM") that proposes immediate and comprehensive reform relating into intercarrier compensation. FCC (11-13) (released 2/9/11), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/FCC-11-13A1.pdf. Comments on this reform are due April 18, 2011 and reply comments are due on May 23, 2011. Therefore, administrative efficiency certainly suggests that the PSC should wait to see what action is taken by the FCC. The inter-related pieces of intercarrier compensation may be changed in ways that the PSC should consider before embarking on a new regulatory regime governing the level of intrastate switched access charges in Kentucky. In other words, if the rules are going to change, for the sake of both customers and carriers, a single change is far preferable to multiple successive changes. This is especially important because the imposition of AT&T's requested rate regulation on CLECs could have both significant adverse and unreasonable financial impacts on CLECs and would represent a significant change in the regulatory approach toward the Kentucky competitive telecommunications market.

AT&T does not have any valid concerns in delaying this action. SouthEast has consistently submitted its tariffed intrastate rates for years, and AT&T has not requested a PSC investigation. Simply put, there is no pressing regulatory need in Kentucky that would justify the PSC pursuing this proceeding at this time.

II. AT&T has not demonstrated that current CLEC switched access rates in Kentucky are unreasonable. Any reduction unsupported by cost studies would be confiscatory.

There is a presumption that the existing rates of regulated entities are valid and reasonable. Therefore, AT&T bears the burden of proof that the tariffed rates of the carriers are unreasonable. SouthEast does not dispute that its switched access rates currently exceed the switched access rates for AT&T. However, comparing SouthEast or any other competitor's intrastate switched access rates with those of AT&T is essentially meaningless. Just because other carriers access rates are higher than AT&T's is no evidence that SouthEast's rates are inflated or are otherwise unjust and unreasonable. The operations and service areas of AT&T and SouthEast are vastly different and, as a result produce different costs and rates for all of the services. Capping or benchmarking another carriers switched access rates at AT&T's current access rates, at least without first finding such support in a cost study, would significantly under-recover the carrier's costs and would seriously jeopardize the ability of CLECs to compete with AT&T. AT&T's Petition essentially consists of a listing of the various carriers' switched access rates along with the accompanying conclusion that if these rates exceed those of AT&T they are de facto excessive and unreasonable. In essence, AT&T seeks to shift the burden of proving what is a reasonable rate for the provision of switched access in Kentucky onto the competitors, which is absurd. However, SouthEast contends that before any reduction in switched access rates is made, AT&T should be required to illustrate that the current level of access rates are not just and reasonable **AND** that AT&T's proposed rate is a just and reasonable rate for the competitors. The PSC should not blindly follow other state utility commissions that have imposed intrastate benchmarks.

SouthEast contends that competitors like SouthEast will never enjoy the cost benefits of AT&T's economics of scale. AT&T serves the overwhelming majority of access lines in the state of Kentucky and as a result, it switches more minutes of traffic than does any CLEC or combination of CLECs in the state. Therefore, imposing their rates on a CLEC's cost is just not reasonable. However, if the PSC elects to

continue down this regulatory path, it is critical that the PSC allow a reasonable time period for CLECs to produce and submit a cost study to justify their switched access rates. The PSC should also examine AT&T's cost of providing service, because the prices they charge to CLECs directly correlate with the higher costs facing CLECs. The schedule proposed by AT&T does not provide ample time for a thorough examination of costs for either of these providers.

One of the most basic tenets of rate regulation is that the regulated entity is entitled to recover its costs, which include a reasonable return on capital. Where rates do not provide for cost recovery and a reasonable return, they are confiscatory. *Federal Power Commission v. Hope Natural Gas Co.* 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1943). Ensuring CLEC cost recovery is not a simple inquiry that should be pursued in an accelerated proceeding such as the one proposed by AT&T.

III. The Kentucky Universal Service Fund should be available to CLECs as well as ILECs.

AT&T's proposal offers a means of recoupment for Kentucky Independent Telephone Companies ("ICOs") affected by the proposed rate cap by establishing a Kentucky Universal Service Fund. However, the Proposal states that because CLECs have the ability to choose what geographic areas to enter, they should not be entitled to recover any access revenue reductions from the Kentucky Universal Service Fund. AT&T proposes that a CLEC's only means of recoupment is via retail pricing. AT&T's petition urges the PSC to blindly follow other states that have established state Universal Service Funds; however, AT&T fails to mention that the majority of the states with established Universal Service Funds have made this means of recoupment accessible to CLECs, such as SouthEast. However, should the PSC decide to exempt CLECs from Kentucky Universal Service Fund eligibility, it should take into consideration those CLECs that have dedicated their entire service area to the rural markets of Kentucky. The FCC recognizes a rural exemption to their benchmark limitation on access charges for qualifying CLECS. In order to qualify for the rural exemption, the CLEC must meet the definition of rural CLEC under 47 CFR 61.26 (6). The FCC established this exemption so that rural CLECs could recoup some

of the extraordinary expenses involved in solely serving rural markets. If the State of Kentucky chooses to establish a Kentucky Universal Service Fund that is unavailable to CLECs, then it should establish a rural exemption similar to that established by the FCC.

IV. Should the PSC determine that some reduction is appropriate, they should examine other options that will better balance all of the parties' rights and better serve the public interest.

SouthEast strongly urges the PSC to consider the public interest and balance the interests of competitor cost recovery, financial viability and local competition in Kentucky against the vague assertion of AT&T that somehow, sometime, somewhere Kentucky customers may benefit if competitive switched access charges are reduced and capped. SouthEast would like to see evidence of consumer benefits in states that have implemented reductions in rates as proposed by AT&T. The Kentucky PSC must maintain the longstanding goal of keeping a competitive market in Kentucky and consider the substantial impact a flash cut access charge reduction would pose to CLECs and consumers in Kentucky. The type of radical cuts without any means of recoupment proposed by AT&T would cause a significant hardship to CLECs and would adversely affect competition in Kentucky. In fact, AT&T's proposal for CLECs only offers a thirty (30) day transition period, which would require CLECs to reduce their intrastate rates immediately without giving them the opportunity to attempt to justify higher rates with cost studies. SouthEast does not see the benefit to Kentucky consumers with this proposal. Instead, SouthEast contends that should the PSC decide that access charge reductions for CLECs are appropriate it must consider over what period the reduction should reasonably be phased in. If the reductions were even close to the magnitude proposed by AT&T, then SouthEast would suggest that implementation ought to occur in several steps, over several years as demonstrated in Georgia. Ga. Code Ann. Section 46-5.

V. Conclusion

With FCC action on access reform inevitably coming in the near future, the PSC should adopt a prudent course and wait to see what action the FCC ultimately takes because any perceived problems regarding the level of switched access charges in Kentucky could be solved by the FCC. Most importantly, insufficient evidence has been produced to show either that CLEC access rates are unreasonable or that AT&T's access rates should be used as the appropriate benchmark for CLEC access rates. Similarly, there is nothing to suggest that Kentucky consumers will realize a direct benefit from a grant of AT&T's requested proposal. If the Commission is inclined to continue the proceeding at bar, it should allow interested parties the opportunity to show their costs of providing such access service and offer rate reductions only over a significant transition period.

Respectfully submitted this 14th day of April, 2011.

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