

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

The Application of Competitive Carriers of the)
South, Inc. for a Declaratory Order Affirming that)
The Interconnection Regimes under KRS 278.530) Case No. 2015-00283
and 47 U.S.C. § 251 are Technology Neutral)

**VERIZON'S INITIAL BRIEF IN OPPOSITION TO
COMPSOUTH'S REQUEST FOR DECLARATORY ORDER**

Comes the Intervenor MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services (Verizon), by counsel, and opposes the request by Competitive Carriers of the South, Inc. (CompSouth) for a declaratory order. In essence, CompSouth asks the Commission to determine that upon request by a competitive local exchange carrier (CLEC), the Commission must establish rates, terms and conditions for the exchange of voice traffic in Internet Protocol (IP VoIP) between a CLEC and an incumbent local exchange carrier (ILEC). CompSouth's request should be denied because it has failed to demonstrate that it is entitled to a declaratory order under 807 KAR 5:001. Even if the Commission were to reach the merits (which it should not), it should reject CompSouth's request because the FCC has directed VoIP providers to negotiate IP VoIP arrangements while the FCC decides whether IP VoIP interconnection is subject to 47 U.S.C. §§ 251 and 252; VoIP is an information service and not a telecommunications service subject to interconnection obligations under 47 U.S.C. § 251(c); and subjecting IP VoIP interconnection to legacy TDM rules would conflict with sound public policy.

FACTUAL BACKGROUND

This case involves the exchange of Voice over Internet Protocol (VoIP) traffic between providers' networks. VoIP uses a broadband connection at the end user's location to provide service "that enables real-time, two-way voice communications originating from or terminating to an end user in Internet Protocol format."¹ Internet Protocol (IP) "refers to a set of standards that permit computers and networks to connect, communicate, and transfer data between them."² IP networks differ from traditional networks that use Time Division Multiplexing (TDM) protocol in which a circuit-switched, dedicated pathway is created for the transmission of calls over the Public Switched Telephone Network (PSTN). IP networks, in contrast, use data packets that do not require a dedicated pathway.³ VoIP traffic may be exchanged in IP or TDM format, which means providers may exchange VoIP traffic regardless of what type of network (IP or TDM) is used to originate or terminate the traffic.⁴

IP VoIP is VoIP traffic that is exchanged between providers in IP format.⁵ If providers have not established an IP interconnection arrangement, they may still exchange VoIP traffic, but before they can do so one of the providers must convert the VoIP traffic to TDM.⁶ For example, if one customer with VoIP service calls another customer with traditional, TDM service, the VoIP call must be converted to TDM for the call to be completed.⁷ When both the calling and called parties both have VoIP service, and the providers have not arranged for IP VoIP interconnection, the call can still be completed, but with two protocol conversions (from IP to

¹ Direct Testimony of Paul B. Vasington, filed October 26, 2016, (Vasington Direct) at 3.

² *Id.* at 4.

³ *Id.*

⁴ *Id.* at 4-5.

⁵ *Id.* at 4.

⁶ *Id.* at 5.

⁷ *Id.*

TDM and back again). Such conversions are commonplace in the industry.⁸ Indeed, CompSouth does not allege that its members have been unable to exchange VoIP traffic with the ILEC Intervenors⁹ under their existing interconnection arrangements.

The three CompSouth members involved in this case seek to obtain IP VoIP interconnection through the negotiation and arbitration process in 47 U.S.C. §§ 251 and 252 so that rates, terms and conditions for such interconnection would be governed by the Commission. Those members already have interconnection agreements with AT&T Kentucky that permit the parties to exchange traffic.¹⁰ Those agreements remain in effect until terminated by one of the parties.¹¹ The CompSouth members have not requested IP VoIP interconnection with AT&T Kentucky,¹² nor apparently have they sought to negotiate and (if necessary) arbitrate new interconnection agreements with AT&T Kentucky. AT&T Kentucky and CBT have not entered into IP VoIP agreements, so there is no such agreement even arguably available for adoption from those ILECs.¹³

LAW AND PUBLIC POLICY

CompSouth fails to allege a basis on which the Commission could issue a declaratory order under 807 KAR 5:001, so the Commission should deny CompSouth's request without reaching the merits of its claims. If the Commission considers the merits, however, CompSouth's request still should be denied because Kentucky ILECs have no duty under Section 251(c) of the federal Communications Act to provide IP VoIP interconnection and

⁸ *Id.*

⁹ The ILEC Intervenors are Verizon, BellSouth Telecommunications, LLC d/b/a AT&T Kentucky (AT&T Kentucky), and Cincinnati Bell Telephone Company LLC (CBT).

¹⁰ Direct Testimony of Scott McPhee, filed October 26, 2016, (McPhee Direct) at 6.

¹¹ *Id.*

¹² *Id.*

¹³ See AT&T Kentucky's Supplemental Responses to CompSouth's Information Requests, Responses 3-5, filed January 12, 2017; Response of CBT to CompSouth's Information Requests, Responses 1-3, filed November 18, 2016.

because it would be contrary to sound public policy to impose legacy TDM legal and regulatory requirements on newer IP communications technology.

A. CompSouth Is Not Entitled to a Declaratory Order

CompSouth poses a hypothetical question: If a CLEC were to petition for arbitration under 47 U.S.C. §§ 251 and 252, would the Commission require an ILEC to provide IP VoIP interconnection under Sections 251 and 252? As explained in the Direct Testimony of AT&T Kentucky witness Scott McPhee, CompSouth raises this issue in the wrong proceeding. Under 807 KAR 5:001, the Commission only may issue a declaratory order concerning Kentucky, not federal, law. CompSouth has no claim against AT&T Kentucky under Kentucky's interconnection statute, K.R.S. 278.530, because the members pursuing this case already have interconnection agreements with AT&T Kentucky and have established interconnection under those agreements.¹⁴ CompSouth has not alleged that its members lack interconnection agreements or arrangements with any other ILEC in the state. In short, CompSouth presents no law that the Commission may interpret in a declaratory order proceeding.

B. The Requested Declaratory Order Would Conflict with the FCC's Direction to Providers Pending Its Resolution of the IP VoIP Interconnection Issue

The FCC stated in 2011 that it expected all providers to negotiate IP VoIP interconnection in good faith while it considered whether the federal Communications Act requires IP VoIP interconnection, or whether the Act instead is best interpreted to continue to "leave IP-to-IP interconnection to unregulated commercial agreements."¹⁵ In 2015, the FCC reaffirmed twice that this issue remains before it. In a brief to the DC Circuit Court of Appeals, the FCC stated: "It is unsettled whether VoIP providers themselves have a right to

¹⁴ McPhee Direct at 6.

¹⁵ *ICC Reform Order* at ¶¶ 1011, 1341, 1343.

interconnection under Section 251 of the Communications Act.”¹⁶ In an order in another docket, the FCC “decline[d] to mandate [IP VoIP interconnection] arrangements, as the Commission is currently considering the appropriate policy framework for VoIP interconnection in pending proceedings.”¹⁷ The declaratory order that CompSouth requests would put the Commission in conflict with the FCC’s direction that providers negotiate IP VoIP interconnection in good faith pending the FCC’s resolution of this issue. CompSouth’s request for a declaratory order should be denied for that reason alone.

C. IP VoIP Traffic Is Not Subject to 47 U.S.C. §§ 251 and 252

The FCC has made clear that only an “agreement that creates an ongoing obligation pertaining to” one of the duties in Section 251(b) or (c) “is an interconnection agreement that must be filed pursuant to Section 252(a)(1).”¹⁸ Therefore, agreements that do not implement any Section 251(b) or (c) duty are *not* Section 252 interconnection agreements, even if they are between an ILEC and another telecommunications carrier. CompSouth asks the Commission to impose a duty under Section 251(c)(2) to provide IP VoIP interconnection. But no such obligation exists because the duty in Section 251(c)(2) is limited to interconnection with a “requesting telecommunications carrier” that is “for the transmission and routing of telephone exchange service and exchange access” – that is, for telecommunications services.¹⁹

Retail VoIP services are information services, not telecommunications services, for at least two independent reasons. First, retail VoIP services meet the FCC’s definition of “information service” because they offer customers a single, integrated suite of features and

¹⁶ FCC Brief for Respondents, *AT&T v. FCC*, Case No. 15-1059 (DC Cir Oct. 5, 2015).

¹⁷ See, Report and Order, *In the Matter of Numbering Policies for Modern Communications*, 30 FCC Rcd. 6839, 6863 ¶ 50 (2015).

¹⁸ See, Memorandum Opinion and Order, *Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, 17 FCC Rcd 19337 (2002) ¶ 8 (emphasis in the original omitted).

¹⁹ 47 U.S.C. § 151(c)(2).

capabilities that allow them to “generat[e], acquir[e], stor[e], transform[], process[], retriev[e], or make[e] available information via telecommunications.”²⁰ Second, retail VoIP services are information services because they offer customers the capability of a net protocol conversion from IP to TDM or from TDM to IP.²¹ As noted above, such protocol conversions are necessary, for example, when a VoIP customer calls a customer with TDM service.²²

Because retail VoIP services are information services, an ILEC does not have a duty to provide IP VoIP interconnection under Sections 251 and 252. Agreements to provide such interconnection therefore must be negotiated on a commercial basis.

D. The Requested Declaratory Order Would Conflict with Sound Public Policy

The Section 252 process for creating interconnection agreements was enacted more than twenty years ago for a communications market that was much different than it is now. As Mr. Vasington notes, today “ILECs are just one of many providers in the communications marketplace, with no special historical advantages in the provision of VoIP services.”²³ Indeed, according to a recent FCC report, ILECs served only 18 percent of the total interconnected VoIP subscribers in Kentucky.²⁴

In today’s communications market, IP VoIP interconnection can most effectively be established through commercial negotiations because they enable VoIP providers to arrange

²⁰ 47 U.S.C. § 153(24).

²¹ See, e.g., *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm’n*, 461 F. Supp. 2d 1055, 1082 (E.D. Mo. 2006) (relying on this “net protocol conversion from the digitized packets of the IP protocol to the TDM technology used on the PSTN” to find that VoIP service “is an information service”), *aff’d*, 530 F.3d 676 (8th Cir. 2008).

²² Vasington Direct at 5. CompSouth cites a decision by the California Public Utilities Commission imposing certain requirements relating to IP VoIP interconnection as a condition of its approval of the transfer of control of Verizon California Inc. to Frontier Communications Corporation. See, *Joint Application of Frontier Communications Corporation, Frontier Communications of America, Inc. (U5429C), Verizon California, Inc. (U1002C), Verizon Long Distance LLC (U5732C), and Newco West Holdings LLC for Approval of Transfer of Control Over Verizon California, Inc. and Related Approval of Transfer of Assets and Certifications*, D.15-12-005 (2015). Given this context, this Commission should give that decision little to no weight.

²³ Vasington Direct at 12.

²⁴ *Id.*, citing <https://www.fcc.gov/wireline-competition/voice-telephone-services-report>.

network configurations that best accommodate their networks.²⁵ Through those arrangements, providers can exchange traffic in IP format at a few mutually agreed upon interconnection points for the entire country.²⁶ Commercial negotiations also enable VoIP providers to coordinate the migration of traffic from TDM interconnection to IP VoIP interconnection as they convert legacy TDM end user services to IP end user services.²⁷ Accordingly, Verizon and its affiliates have pursued commercial negotiations for the exchange of VoIP traffic in IP format and closed several deals, first with Comcast and then with a number of other VoIP providers.²⁸

Changing course now and requiring that IP VoIP agreements be subject to Section 252 arbitration could cause significant harm because legacy TDM interconnection rules do not fit IP networks. For example, the FCC's legacy TDM interconnection rules that require interconnection at one point per Local Access and Transport Area (LATA), now make no sense for IP VoIP interconnection, which may just require two interconnection points for the whole country.²⁹ To make matters worse, as CLECs sought to arbitrate IP VoIP interconnection terms in different states, they could ask that ILECs be required to make interconnection points available in each state, or even in each LATA in each state, to accommodate their requests, even though those interconnection arrangements would be highly inefficient. And as state commissions made different arbitration rulings, inconsistent obligations could be imposed on ILECs that would hamstring their operations and undermine the efficiencies that IP VoIP interconnection should provide. In sum, legacy TDM obligations imposed on a state-by-state basis make no sense in an IP world. As a matter of policy, the Commission should reject that backward approach.

²⁵ Vasington Direct at 10.

²⁶ *Id.* at 10-11.

²⁷ *Id.* at 11.

²⁸ *Id.* at 9.

²⁹ *Id.* at 11-12.

In conclusion, CompSouth's request for a declaratory order should be denied because

- a. CompSouth has failed to demonstrate that it is entitled to a declaratory order under 807 KAR 5:001;
- b. The Commission should reject CompSouth's request because the FCC has directed VoIP providers to negotiate IP VoIP arrangements while the FCC decides whether IP VoIP interconnection is subject to 47 U.S.C. §§ 251 and 252;
- c. VoIP is an information service and not a telecommunications service subject to interconnection obligations under 47 U.S.C. § 251(c); and
- d. Subjecting IP VoIP interconnection to legacy TDM rules would conflict with sound public policy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the same document being sent for filing in paper medium with the Commission, that the electronic filing was transmitted to the Commission on March 24, 2017, and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

/s/ Luke Morgan
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