

S T O L L

K E E N O N

&

P A R K

L L P

2650 AEGON CENTER | 400 WEST MARKET STREET | LOUISVILLE, KENTUCKY 40202-3377
(502) 568-9100 PHONE | (502) 568-5700 FAX | WWW.SKP.COM

C. KENT HATFIELD
502-568-5745
hatfield@skp.com

August 29, 2005

RECEIVED

AUG 30 2005

PUBLIC SERVICE
COMMISSION

Ms. Elizabeth O'Donnell
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40601

RE: Case No. 2004-00234

Dear Ms. O'Donnell:

Enclosed for filing in the above-referenced case are the original and six (6) copies of the Rebuttal Testimony of Richard T. Guepe on behalf of AT&T Communications of the South Central States, Inc. Please indicate receipt of this filing by your office by placing a file stamp on the extra copy and returning to me the enclosed, self-addressed stamped envelope.

Sincerely,



C. Kent Hatfield
Counsel for AT&T of the
South Central States, Inc.

CKH:jms

enc.

cc: Parties of Record

**BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION
Frankfort, Kentucky**

RECEIVED

AUG 30 2005

PUBLIC SERVICE
COMMISSION

In the Matter of:)
Petition by AT&T Communications of the)
South Central States, LLC and TCG Ohio, Inc.) Case No. 2004-00234
for Arbitration of Certain Terms)
and Conditions of a Proposed)
Interconnection Agreement with)
BellSouth Telecommunications, Inc.)
Pursuant to 47 U.S.C. Section 252)
_____)

**REBUTTAL TESTIMONY OF
RICHARD T. GUEPE**

**ON BEHALF OF
AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, LLC and
TCG OHIO, INC.**

AUGUST 30, 2005

1 **Q. PLEASE STATE YOUR NAME.**

2 A. Richard T. Guepe.

3 **Q. ARE YOU THE SAME RICHARD T. GUEPE THAT SUBMITTED**
4 **DIRECT TESTIMONY ON BEHALF OF AT&T?**

5 A. Yes.

6

7 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

8 A. The purpose of my rebuttal testimony is to respond to the direct testimony of
9 BellSouth witness Kathy K. Blake addressing Issue 30 in the AT&T/BellSouth
10 Joint Issues Matrix, the transit traffic issue. To the extent I do not specifically
11 address each argument raised by BellSouth, that should not be taken as agreement
12 with BellSouth's position. Instead, in those instances, I would refer the
13 Commission to my direct testimony which I believe already fully addresses the
14 issue in its entirety and for the reasons described in my direct testimony, AT&T's
15 position should be adopted.

16

17 **Q. DO YOU AGREE WITH BELLSOUTH'S POSITION THAT TRANSIT IS**
18 **NOT A SECTION 251 OBLIGATION UNDER THE 1996 ACT (BLAKE**
19 **DIRECT , P 3-5)?**

20 A. No. As I explained in my direct testimony, AT&T believes BellSouth has an
21 obligation pursuant to Section 251(c) of the Act to continue to allow carriers that
22 are not directly connected with one another to exchange traffic with one another
23 via BellSouth's network. This interpretation of BellSouth's 251(c)(2) obligation
24 is consistent with the terms of Section 251(a)(1) of the Act that requires carriers to
25 accept indirect interconnection. The FCC acknowledged this in ¶ 997 of the

1 *Local Competition Order* in which it found that the indirect interconnection
2 requirement of Section 251(a)(1) could be satisfied by two non-incumbent LECs
3 “interconnection with an incumbent LEC’s network”. In such a circumstance, the
4 two non-incumbent LECs are indirectly interconnecting with each other pursuant
5 to Section 251(a)(1), through the interconnections with the incumbent LEC’s
6 network at a technically feasible point pursuant to Section 251(c)(2).
7 Additionally, BellSouth itself has acknowledged transit is a Section 251
8 obligation. In a recently released North Carolina Utilities Commission (NCUC)
9 Recommended Arbitration Order, the NCUC states¹:

10 BellSouth initially contended that it was not required to provide a transit
11 traffic function because it is not a Section 251 obligation under the Act.

12 In cross examination, BellSouth witness Blake acknowledged that
13 BellSouth has offered to provide a tandem transit function in these
14 Agreements, but stated that the crux of the dispute in this issue is the rate.
15 **Witness Blake also modified her position concerning BellSouth’s**
16 **Section 251 obligations by agreeing that BellSouth had an obligation**
17 **to provide a transit traffic function** based upon the FCC’s Virginia
18 arbitration orders and the Commission’s September 22, 2003 Order in
19 Docket No. P-19, Sub 454 that found the ILECs have an obligation to
20 provide transit traffic service.

21 Witness Blake acknowledged that the Commission has previously found
22 ILECs have an obligation to provide transit service and **that the FCC has**
23 **found the tandem transit function is a Section 251 obligation.**

24

25 **Q. BELLSOUTH REFERS TO THE VIRGINIA ARBITRATION ORDER**
26 **(BLAKE DIRECT, P. 6) TO SUPPORT ITS POSITION THAT IT HAS NO**
27 **OBLIGATION TO OFFER TRANSIT SERVICE. DOES THIS ORDER**
28 **CONCLUDE THAT ILECS DO NOT HAVE AN OBLIGATION TO**
29 **PROVIDE TRANSIT SERVICE AND THAT TRANSIT SERVICE**
30 **SHOULD BE “MARKET” PRICED?**

¹ P. 53. In the Matter of Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc. issued July 26, 2005. Emphasis added.

1 A. No. In the order, the Wireline Competition Bureau does not conclude there is no
2 duty to provide transit service. The order clearly states that since the FCC has
3 “not had an occasion to determine whether incumbent LECs has a duty to provide
4 transit service under the provision of the statute” and there is not a prior “clear
5 Commission precedent or rules” addressing such an obligation, the Wireline
6 Competition Bureau declined to determine whether the obligation exists,
7 effectively leaving the issue unresolved. In its September 22, 2003 Order in
8 which it determined ILECs do have an obligation to provide transit traffic, the
9 North Carolina Utilities Commission recognized the nature of the Wireline
10 Competition Bureau’s determination on this issue when it stated:

11 The Opponents rely heavily on the Virginia Arbitration Order for the
12 proposition that there is no obligation to provide the transit function. The
13 Order was not meant to bear such a heavy burden. A close examination of
14 the Order yields a more equivocal conclusion. The fact of the matter is
15 that the FCC, as is the case in many matters, has not definitively made its
16 mind up on the matter.

17 **Q. HAS BELL SOUTH ADVOCATED TO THE FCC TO HAVE THE FCC**
18 **MAKE A DETERMINATION THAT ILECS DO NOT HAVE AN**
19 **OBLIGATION TO PROVIDE THE TRANSIT TRAFFIC FUNCTION?**

20 A. Yes. In CC Docket No. 01-92² BellSouth requested the FCC to affirm a BOC has
21 no obligation to provide transit and to clarify a transiting company may charge
22 market rates.

23 **Q. WOULD SUCH A REQUEST HAVE BEEN NECESSARY IF, AS**
24 **BELL SOUTH’S TESTIMONY IMPLIES, THE FCC HAD CLEARLY**
25 **MADE SUCH A DECISION?**

² For example, Ex-parte filings with the FCC dated May 16, 2003 and July 10, 2003.

1 A. No. This action demonstrates that even BellSouth is aware that the FCC has yet
2 to establish clear rules on this issue; so, for now, this matter is up to the states to
3 decide.

4

5 **Q. BELLSOUTH CLAIMS IT HAS COSTS THAT ARE NOT INCLUDED IN**
6 **THE TELRIC RATES (BLAKE DIRECT, P. 8) AND THEREFORE**
7 **SHOULD BE ABLE TO RECOVER THOSE COSTS. DO YOU AGREE?**

8 A. BellSouth has not presented any cost studies supporting that contention. The
9 transit function is not something new and BellSouth was providing the service
10 when it filed its UNE cost studies. I cannot say whether BellSouth left costs out
11 of those studies; but BellSouth would be free to file new TELRIC studies if it now
12 feels its prior studies were wrong.

13

14 **Q. HAS BELLSOUTH OFFERED ANY TESTIMONY SHOWING HOW THE**
15 **PUBLIC INTEREST IS SERVED BY ITS POSITION?**

16 A. No. What is most telling about BellSouth's testimony on this issue is that it is
17 totally devoid of any public interest rationale for its position, which is no surprise,
18 since no supporting public interest reason exists.

19

20 **Q. WHAT IS THE PUBLIC INTEREST WITH RESPECT TO**
21 **BELLSOUTH'S PROVISION OF TRANSIT SERVICE?**

22 A. Today, there is no competitive alternative to BellSouth's transit service in
23 Kentucky - none. To my knowledge, there is no other carrier operating in
24 Kentucky that has existing interconnections with all other carriers in LATAs
25 served by BellSouth. Currently, every carrier in Kentucky, every independent
26 telephone company, every CMRS provider and every CLEC absolutely depends

1 on BellSouth's transit service to exchange traffic with some other non-BellSouth
2 carrier in at least some instances. Without some effective market force to
3 constrain BellSouth's transit rates, all of these carriers depend on the
4 Commission's regulation of BellSouth's transit service. Granting BellSouth's
5 proposal would therefore be a license for BellSouth to use its monopoly position
6 to extract from its competitors rates far above BellSouth's costs, or worse, to
7 cripple the competitor's ability to serve customers if the CLEC cannot pay
8 BellSouth's monopoly transit rates.

9 **Q. HAS BELLSOUTH OFFERED ANY TESTIMONY DEMONSTRATING**
10 **THERE IS A COMPETITIVE MARKET FOR THE TRANSIT FUNCTION**
11 **IN KENTUCKY ?**

12 A. None whatsoever. A true market rate can only exist if there are legitimate
13 competitive alternatives. When there are competitive alternatives, the alternative
14 carriers exert market pressure to keep the rates at a reasonable level. However,
15 there has been no showing that there are competitive alternatives to BellSouth's
16 transit service in Kentucky and therefore a "market rate" has no relevance.

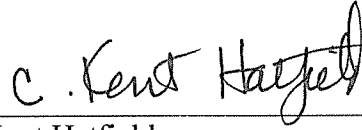
17

18 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

19 A. Yes.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Rebuttal Testimony of Richard T. Guepe filed on behalf of AT&T Communications of the Southern States, LLC, was served upon all parties of record this 30th day of August, 2005.



C. Kent Hatfield

Hon. Dorothy J. Chambers
General Counsel/Kentucky
BellSouth Telecommunications, Inc.
601 West Chestnut Street, Room 410
P.O. Box 32410
Louisville, Kentucky 40232

Joan Coleman, Esquire
Vice President
Regulatory & External Affairs
601 West Chestnut Street, Room 410
P.O. Box 32410
Louisville, Kentucky 40232

Jeanne Accetta
Compliance Administrator
TCG Ohio
c/o AT&T
1200 Peachtree Street, NE
Suite 8100
Atlanta, Georgia 30309