

**Dinsmore & Shohl** LLP  
ATTORNEYS

Edward T. Depp  
(502) 540-2347 (Direct Dial)  
tip.depp@dinslaw.com

RECEIVED

AUG 7

PUBLIC SERVICE  
COMMISSION

August 4, 2006

**VIA HAND DELIVERY**

Ms. Beth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Blvd.  
Frankfort, KY 40601

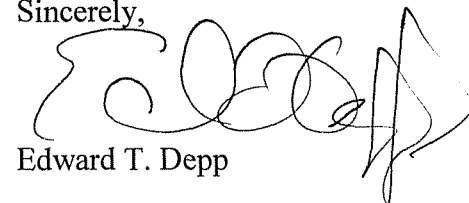
***Re: Motion of Duo County Telephone Cooperative Corporation, Inc. to Approve  
Interconnection Agreement with American Cellular Corporation f/k/a ACC  
Kentucky License LLC; Case No. 2006-00220***

Dear Ms. O'Donnell:

I have enclosed for filing in the above-styled case the original and eleven (11) copies each of:  
(i) the Motion of Duo County Telephone Cooperative Corporation, Inc. ("Duo County") to Approve  
Interconnection Agreement with ComScape; and (ii) Motion of Duo County to Approve  
Interconnection Agreement with NTCH in the above-referenced matter. Please file stamp one (1)  
copy of each motion and return it our deliveryperson.

Thank you, and if you have any questions, please contact me at (502) 540-2300.

Sincerely,



Edward T. Depp

ETD/lb  
Enclosures

cc: Bill Magruder (w/encl.)

Ms. Beth O'Donnell  
August 4, 2006  
Page 2 of 2

---

Steven E. Watkins (w/o encl.)  
John E. Selent, Esq. (w/o encl.)  
Holly C. Wallace, Esq. (w/o encl.)

112383v1

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

AUG 04 2006

Petition of Duo County Telephone Cooperative )  
Corporation, Inc. for Arbitration of Certain )  
Terms and Conditions of Proposed Interconnection )  
Agreement with Cellco Partnership d/b/a )  
Verizon Wireless, GTE Wireless of the Midwest )  
Incorporated d/b/a, and Kentucky RSA No. 1 )  
Partnership d/b/a Verizon Wireless, Pursuant to )  
The Communications Act of 1934, as amended )  
by The Telecommunications Act of 1996 )

PUBLIC SERVICE  
COMMISSION

Case No. 2006-00217

**MOTION OF DUO COUNTY TELEPHONE COOPERATIVE  
CORPORATION, INC. TO APPROVE INTERCONNECTION AGREEMENT**

Duo County Telephone Cooperative Corporation, Inc. ("Duo County"), by counsel, pursuant to the Telecommunications Act of 1996 ("the Act"), KRS Chapter 278.040, and 807 KAR 5:001, hereby moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission") to approve the interconnection agreement Duo County submitted to the Commission in this arbitration proceeding against ComScape Telecommunications, Inc. ("ComScape"). In support of its motion, Duo County states as follows.

**INTRODUCTION**

This arbitration proceeding arises from the impending termination of an agreement ("the CMRS Agreement") between CMRS providers, rural independent local exchange carriers ("Rural ILECs"), and BellSouth Telecommunications, Inc. ("BellSouth"), effective May 1, 2004, and terminating on December 31, 2006. The CMRS Agreement required the signatory CMRS providers to commence interconnection negotiations with the Rural ILECs if they wished for their Rural-ILEC-destined traffic to continue to be delivered to the Rural ILECs after that date. ComScape is a CMRS provider, and Duo County a Rural ILEC, under the Agreement.

Pursuant to Section 3.01 of the CMRS Agreement, interconnection negotiations between Duo County and ComScape were deemed to commence on January 1, 2006, regardless of whether an actual request for negotiation was received by that date.<sup>1</sup> Throughout the “negotiation” process, ComScape has failed to negotiate in good faith with Duo County. Despite Duo County's repeated attempts to correspond, negotiate, and exchange draft interconnection agreements, ComScape has failed to respond in any meaningful way. Because of ComScape’s failure to respond meaningfully to Duo County's attempts to negotiate, Duo County filed an arbitration petition against ComScape on May 31, 2006. Duo County attached its proposed interconnection agreement to that petition.

Because ComScape failed to negotiate in good faith as required by 47 U.S.C. 251(c) and regulations promulgated thereunder, the Commission should approve the proposed interconnection agreement Duo County has submitted to the Commission in this proceeding.

#### **STATEMENT OF THE FACTS**

Duo County's attempts to negotiate with ComScape began on February 2, 2006, when Duo County sent a letter to ComScape advising it of Duo County's desire to negotiate an interconnection agreement pursuant to Section 3.01 of the CMRS Agreement of May 2004. Duo County enclosed with that letter a copy of the template interconnection agreement from which negotiations would proceed.<sup>2</sup>

ComScape made no effort to propose changes to the template agreement it had received from Duo County. Therefore, on March 7, 2006, Duo County sent another letter advising ComScape of Duo County's desire to negotiate and enclosing another template interconnection agreement, this

---

<sup>1</sup> Thus, the statutory window for arbitration in this matter opened on May 16, 2006 and closed on June 10, 2006.

<sup>2</sup> See February 2, 2006 letter from John E. Selent to Bhogin M. Modi, attached as Exhibit 2 to Duo County's Petition for Arbitration (the "Petition").

time with the proposed traffic exchange splits, proposed reciprocal compensation rates, and proposed point of interconnection.<sup>3</sup>

Because ComScape proposed no specific changes to the template interconnection agreement, Duo County sent yet another letter to ComScape on May 15, 2006 regarding the status of ComScape's review of the proposed interconnection agreement.<sup>4</sup>

As of this date, ComScape still has not provided Duo County with any proposed changes to the interconnection agreement. Accordingly, Duo County filed its arbitration petition against ComScape on May 31, 2006.

### **ARGUMENT**

The Commission should approve the interconnection agreement Duo County submitted with its arbitration petition against ComScape because ComScape failed to comply with its statutory duty to negotiate in good faith. ComScape's failure to negotiate in good faith means that any agreement proposed by ComScape, by definition, would not comply with Section 251 of the Act. As such, the Commission should reject any agreement proposed by ComScape and should approve Duo County's agreement in full.

#### **I. Statutory and regulatory law requires ComScape to negotiate in good faith.**

A requesting telecommunications carrier such as ComScape has a duty to negotiate with Duo County in good faith. 47 U.S.C. 251(c)(1) ("The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.") Section 252 (b)(5) of the Act defines certain conduct that constitutes a failure to negotiate in good faith:

The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in

---

<sup>3</sup> See March 7, 2006 letter from John E. Selent to Bhogin M. Modi, attached as Exhibit 3 to the Petition.

<sup>4</sup> See May 15, 2006 letter from John E. Selent to Bhogin M. Modi, attached as Exhibit 4 to the Petition.

carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

Regulations promulgated by the Federal Communications Commission ("FCC") define certain additional conduct that violates the duty to negotiate in good faith:

(c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:

(6) Intentionally obstructing or delaying negotiations or resolutions of disputes;

(7) Refusing throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues; and

(8) Refusing to provide information necessary to reach agreement. . . .

47 CFR 51.301. These controlling provisions set forth at least four situations in which a carrier violates its duty to negotiate in good faith: (1) the complete refusal to negotiate, (2) the intentional delay of negotiations, (3) causing delay by refusing to designate a representative to negotiate, and (4) refusing to provide necessary information.

Critically, this Commission has authority to conclude that ComScape failed to negotiate in good faith with Duo County. *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, FCC 96-325 at ¶ 143 ("First Report and Order") ("state commissions have authority, under section 252(b)(5), to consider allegations that a party has failed to negotiate in good faith.") In fact, it is precisely this power of review by state commissions that ensures the effectiveness of the good faith requirement of the Act.

**[P]arties seeking to avoid a legitimate accusation of breach of the duty of good faith in negotiation will work to provide their negotiating adversary all relevant information -- given that section**

252(b)(4)(B) authorizes the state commission to require the parties "to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues." That provision also states that, if either party "fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived." **The likelihood that an arbitrator will review the positions taken by the parties during negotiations also should discourage parties from refusing unreasonably to provide relevant information to each other or to delay negotiations.**

*Id.* at ¶ 149 (emphasis added). As the FCC has explained, the power of review by state commissions gives the good faith requirement its teeth. Thus, this Commission has the power to decide that ComScape failed to negotiate in good faith with Duo County. Exercising that power will further the purposes of the Act.

**II. ComScape failed to negotiate in good faith by failing to propose revisions to Duo County's template interconnection agreement.**

ComScape failed to negotiate in good faith with Duo County. Duo County contacted ComScape at the beginning of the negotiation window and, over the course of months, sent ComScape multiple letters and copies of a proposed interconnection agreement. ComScape, however, never responded meaningfully to these negotiation overtures. At no time from the beginning of the negotiation window through the beginning of the arbitration window did ComScape make any effort to propose definitive changes to Duo County's template agreement.

ComScape's delay deprived Duo County of many valuable months in which the parties could have been negotiating any unresolved issues as envisioned and required by 47 U.S.C. 251-52. Well into the arbitration window and faced with no meaningful response to its proposed interconnection agreement, Duo County had no choice but to initiate arbitration. The failure by ComScape to respond meaningfully constitutes a "refusal of any other party to the negotiation to participate further in the negotiations," an automatic violation of the duty of good faith. 47 U.S.C. 252(b)(5). Further,

the failure to provide meaningful response can only be interpreted as an intentional delay and a failure to provide necessary information, each of which constitutes a violation of the duty of good faith as defined by the FCC in 47 CFR 51.301.

**III. The Commission should approve the interconnection agreement submitted by Duo County.**

Because of the failure of ComScape to negotiate in good faith, the Commission should approve the interconnection agreement submitted by Duo County in this proceeding. In arbitrating interconnection agreements under Section 252(b) of the Act, a state commission must primarily ensure that its resolution of the arbitration comports with the requirements of Section 251 and regulations promulgated thereunder, including, of course, the duty to negotiate in good faith. 47 U.S.C. 252(c)(1). A state commission may reject an agreement that does not meet those statutory and regulatory requirements, including the duty to negotiate in good faith. 47 U.S.C. 252(e)(2)(B). In making its determination, the state commission has broad discretion to reject an agreement that does not comport with the duties imposed in Section 251. *Bell Atlantic-Delaware, Inc. v. McMahon*, 80 F.Supp.2d 218, 224 (D. Del. 2000) (“The Act provides a disincentive to state commission mediation by allowing the commission to reject agreements that do not “meet the requirements of section 251” of the Act. This grants a state commission broader discretion to reject agreements (in whole or in part) that do not comport with the duties imposed in 251.”)

Here, ComScape violated its statutory duty to negotiate in good faith. (*See supra*, pages 2-3.) For that reason, any agreement proposed by ComScape would not, by definition, comport with the duties imposed by Section 251. 47 U.S.C. 251(c)(1) (“The requesting telecommunications carrier also has the duty to negotiate in good faith . . .”) Therefore, in order to ensure that any interconnection agreement between Duo County and ComScape complies with Section 251 (*see* 47 U.S.C. 252(c)(1)), and pursuant to its power to reject an agreement that does not comply with



Section 251 (*see* 47 U.S.C. 252(e)(2)(B)), the Commission should reject any agreement proposed by ComScape.

Given any agreement that ComScape might propose cannot, by definition, comply with the Act, the Commission should approve Duo County's proposed agreement in full. The Commission has previously demonstrated that it will approve one party's proposed interconnection agreement in full where the other party to arbitration has engaged in stalling and delay. *See In the Matter of: Petition of Brandenburg Telecom, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Verizon South Inc. Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Case No. 2001-224 (hereafter, "*Brandenburg Telecom*").

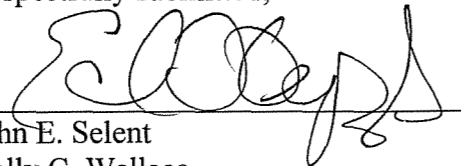
In *Brandenburg Telecom*, Brandenburg Telecom LLC ("Brandenburg") requested interconnection with Verizon. After the Commission ordered the parties to submit an executed agreement complying with the Commission's post-hearing order, Verizon refused to execute the compliant agreement. Brandenburg moved the Commission for an order approving Brandenburg's proposed interconnection agreement in full, arguing that Verizon's delay justified such a remedy. Verizon responded and the issue was fully briefed. Thereafter, the Commission ordered that unless the parties submitted an executed agreement within one week, Brandenburg's proposed agreement "shall become immediately effective and enforceable with or without the signature of Verizon." *See* January 8, 2002 Order, *Brandenburg Telecom*. Thus, the Commission demonstrated its power to approve one party's interconnection agreement in full with or without agreement of the other party.

The Commission should exercise that power here because of ComScape's failure to negotiate in good faith as required by Section 251 of the Act.

**CONCLUSION**

For the foregoing reasons, the Commission should approve the interconnection agreement submitted by Duo County in this proceeding. As demonstrated above, ComScape has thoroughly failed to negotiate in good faith. Accordingly, the Commission should reject any agreement proposed by ComScape and approve in full the agreement tendered by Duo County.

Respectfully submitted,



John E. Selent

Holly C. Wallace

Edward T. Depp

**DINSMORE & SHOHL LLP**

1400 PNC Plaza

500 W. Jefferson Street

Louisville, Kentucky 40202

(502) 540-2300 (telephone)

(502) 585-2207 (fax)

**COUNSEL TO DUO COUNTY  
TELEPHONE COOPERATIVE  
CORPORATION, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by Federal Express on this 4<sup>th</sup> day of August, 2006, to the following individual(s):

Kendrick R. Riggs, Esq.  
Douglas F. Brent, Esq.  
Stoll Keenon Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202  
kendrick.riggs@skofirm.com  
douglas.brent@skofirm.com

*Counsel to T-Mobile and Counsel to Verizon*

Mark R. Overstreet  
Stites & Harbison PLLC  
421 West Main Street  
P.O. Box 634  
Frankfort, Kentucky 40602-0634  
moverstreet@stites.com

*Counsel to AllTel*


John N. Hughes, Esq.  
Attorney at Law  
124 West Todd Street  
Frankfort, Kentucky 40601  
jnhughes@fewpb.net

*Counsel to Sprint PCS*

Holland N. McTyeire  
Greenbaum Doll & McDonald PLLC  
3500 National City Tower  
Louisville, Kentucky 40202  
HNM@gdm.com

*Counsel to ACC*

Bhugin M. Modi  
ComScape Telecommunications, Inc.  
1926 10<sup>th</sup> Avenue North  
Suite 305  
West Palm Beach, FL 33461



COUNSEL TO DUO COUNTY  
TELEPHONE COOPERATIVE  
CORPORATION, INC.

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

AUG 04 2006

PUBLIC SERVICE  
COMMISSION

In the Matter of:

Petition of Duo County Telephone Cooperative )  
Corporation, Inc. for Arbitration of Certain )  
Terms and Conditions of Proposed Interconnection )  
Agreement with Cellco Partnership d/b/a ) Case No. 2006-00217  
Verizon Wireless, GTE Wireless of the Midwest )  
Incorporated d/b/a, and Kentucky RSA No. 1 )  
Partnership d/b/a Verizon Wireless, Pursuant to )  
The Communications Act of 1934, as amended )  
by The Telecommunications Act of 1996 )

**MOTION OF DUO COUNTY TELEPHONE COOPERATIVE CORPORATION, INC.  
TO APPROVE INTERCONNECTION AGREEMENT**

Duo County Telephone Cooperative Corporation, Inc. ("Duo County"), by counsel, pursuant to the Telecommunications Act of 1996 ("the Act"), KRS Chapter 278.040, and 807 KAR 5:001, hereby moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission") to approve the interconnection agreement Duo County submitted to the Commission in this arbitration proceeding against NTCH-West, Inc. ("NTCH"). In support of its motion, Duo County states as follows.

**INTRODUCTION**

This arbitration proceeding arises from the impending termination of an agreement ("the CMRS Agreement") between CMRS providers, rural independent local exchange carriers ("Rural ILECs"), and BellSouth Telecommunications, Inc. ("BellSouth"), effective May 1, 2004, and terminating on December 31, 2006. The CMRS Agreement required the signatory CMRS providers to commence interconnection negotiations with the Rural ILECs if they wished for their Rural-ILEC-destined traffic to continue to be delivered to the Rural ILECs after that date. NTCH is a CMRS provider, and Duo County a Rural ILEC, under the Agreement.

Pursuant to Section 3.01 of the CMRS Agreement, interconnection negotiations between Duo County and NTCH were deemed to commence on January 1, 2006, regardless of whether an actual request for negotiation was received by that date.<sup>1</sup> Throughout the “negotiation” process, NTCH has failed to negotiate in good faith with Duo County. Despite Duo County's repeated attempts to correspond, negotiate, and exchange draft interconnection agreements, NTCH has failed to respond in any meaningful way. Because of NTCH’s failure to respond meaningfully to Duo County's attempts to negotiate, Duo County filed an arbitration petition against NTCH on May 31, 2006. Duo County attached its proposed interconnection agreement to that petition.

Because NTCH failed to negotiate in good faith as required by 47 U.S.C. 251(c) and regulations promulgated thereunder, the Commission should approve the proposed interconnection agreement Duo County has submitted to the Commission in this proceeding.

#### **STATEMENT OF THE FACTS**

Duo County's attempts to negotiate with NTCH began on February 2, 2006, when Duo County sent a letter to NTCH advising it of Duo County's desire to negotiate an interconnection agreement pursuant to Section 3.01 of the CMRS Agreement of May 2004. Duo County enclosed with that letter a copy of the template interconnection agreement from which negotiations would proceed.<sup>2</sup>

NTCH made no effort to propose changes to the template agreement it had received from Duo County. Therefore, on March 7, 2006, Duo County sent another letter advising NTCH of Duo County's desire to negotiate and enclosing another template interconnection agreement, this time

---

<sup>1</sup> Thus, the statutory window for arbitration in this matter opened on May 16, 2006 and closed on June 10, 2006.

<sup>2</sup> See February 2, 2006 letter from John E. Selent to Gary Curry and Tom Sams, attached as Exhibit 2 to Duo County's Petition for Arbitration (the "Petition").

with the proposed traffic exchange splits, proposed reciprocal compensation rates, and proposed point of interconnection.<sup>3</sup>

Because NTCH proposed no specific changes to the template interconnection agreement, Duo County sent yet another letter to NTCH on May 15, 2006 regarding the status of NTCH's review of the proposed interconnection agreement.<sup>4</sup>

As of this date, NTCH still has not provided Duo County with any proposed changes to the interconnection agreement. Accordingly, Duo County filed its arbitration petition against NTCH on May 31, 2006.

### **ARGUMENT**

The Commission should approve the interconnection agreement Duo County submitted with its arbitration petition against NTCH because NTCH failed to comply with its statutory duty to negotiate in good faith. NTCH's failure to negotiate in good faith means that any agreement proposed by NTCH, by definition, would not comply with Section 251 of the Act. As such, the Commission should reject any agreement proposed by NTCH and should approve Duo County's agreement in full.

#### **I. Statutory and regulatory law requires NTCH to negotiate in good faith.**

A requesting telecommunications carrier such as NTCH has a duty to negotiate with Duo County in good faith. 47 U.S.C. 251(c)(1) ("The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.") Section 252 (b)(5) of the Act defines certain conduct that constitutes a failure to negotiate in good faith:

The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in

---

<sup>3</sup> See March 7, 2006 letter from John E. Selent to Tom Sams, attached as Exhibit 3 to the Petition.

<sup>4</sup> See May 15, 2006 letter from John E. Selent to Tom Sams, attached as Exhibit 4 to the Petition.

carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

Regulations promulgated by the Federal Communications Commission ("FCC") define certain additional conduct that violates the duty to negotiate in good faith:

(c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:

(6) Intentionally obstructing or delaying negotiations or resolutions of disputes;

(7) Refusing throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues; and

(8) Refusing to provide information necessary to reach agreement. . . .

47 CFR 51.301. These controlling provisions set forth at least four situations in which a carrier violates its duty to negotiate in good faith: (1) the complete refusal to negotiate, (2) the intentional delay of negotiations, (3) causing delay by refusing to designate a representative to negotiate, and (4) refusing to provide necessary information.

Critically, this Commission has authority to conclude that NTCH failed to negotiate in good faith with Duo County. *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, FCC 96-325 at ¶ 143 ("First Report and Order") ("state commissions have authority, under section 252(b)(5), to consider allegations that a party has failed to negotiate in good faith.") In fact, it is precisely this power of review by state commissions that ensures the effectiveness of the good faith requirement of the Act.

**[P]arties seeking to avoid a legitimate accusation of breach of the duty of good faith in negotiation will work to provide their negotiating adversary all relevant information -- given that section**



252(b)(4)(B) authorizes the state commission to require the parties "to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues." That provision also states that, if either party "fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived." **The likelihood that an arbitrator will review the positions taken by the parties during negotiations also should discourage parties from refusing unreasonably to provide relevant information to each other or to delay negotiations.**

*Id.* at ¶ 149 (emphasis added). As the FCC has explained, the power of review by state commissions gives the good faith requirement its teeth. Thus, this Commission has the power to decide that NTCH failed to negotiate in good faith with Duo County. Exercising that power will further the purposes of the Act.

**II. NTCH failed to negotiate in good faith by failing to propose revisions to Duo County's template interconnection agreement.**

NTCH failed to negotiate in good faith with Duo County. Duo County contacted NTCH at the beginning of the negotiation window and, over the course of months, sent NTCH multiple letters and copies of a proposed interconnection agreement. NTCH, however, never responded meaningfully to these negotiation overtures. At no time from the beginning of the negotiation window through the beginning of the arbitration window did NTCH make any effort to propose definitive changes to Duo County's template agreement.

NTCH's delay deprived Duo County of many valuable months in which the parties could have been negotiating any unresolved issues as envisioned and required by 47 U.S.C. 251-52. Well into the arbitration window and faced with no meaningful response to its proposed interconnection agreement, Duo County had no choice but to initiate arbitration. The failure by NTCH to respond meaningfully constitutes a "refusal of any other party to the negotiation to participate further in the negotiations," an automatic violation of the duty of good faith. 47 U.S.C. 252(b)(5). Further, the

failure to provide meaningful response can only be interpreted as an intentional delay and a failure to provide necessary information, each of which constitutes a violation of the duty of good faith as defined by the FCC in 47 CFR 51.301.

**III. The Commission should approve the interconnection agreement submitted by Duo County.**

Because of the failure of NTCH to negotiate in good faith, the Commission should approve the interconnection agreement submitted by Duo County in this proceeding. In arbitrating interconnection agreements under Section 252(b) of the Act, a state commission must primarily ensure that its resolution of the arbitration comports with the requirements of Section 251 and regulations promulgated thereunder, including, of course, the duty to negotiate in good faith. 47 U.S.C. 252(c)(1). A state commission may reject an agreement that does not meet those statutory and regulatory requirements, including the duty to negotiate in good faith. 47 U.S.C. 252(e)(2)(B). In making its determination, the state commission has broad discretion to reject an agreement that does not comport with the duties imposed in Section 251. *Bell Atlantic-Delaware, Inc. v. McMahon*, 80 F.Supp.2d 218, 224 (D. Del. 2000) (“The Act provides a disincentive to state commission mediation by allowing the commission to reject agreements that do not “meet the requirements of section 251” of the Act. This grants a state commission broader discretion to reject agreements (in whole or in part) that do not comport with the duties imposed in 251.”)

Here, NTCH violated its statutory duty to negotiate in good faith. (*See supra*, pages 2-3.) For that reason, any agreement proposed by NTCH would not, by definition, comport with the duties imposed by Section 251. 47 U.S.C. 251(c)(1) (“The requesting telecommunications carrier also has the duty to negotiate in good faith . . .”) Therefore, in order to ensure that any interconnection agreement between Duo County and NTCH complies with Section 251 (*see* 47 U.S.C. 252(c)(1)),

and pursuant to its power to reject an agreement that does not comply with Section 251 (*see* 47 U.S.C. 252(e)(2)(B)), the Commission should reject any agreement proposed by NTCH.

Given any agreement that NTCH might propose cannot, by definition, comply with the Act, the Commission should approve Duo County's proposed agreement in full. The Commission has previously demonstrated that it will approve one party's proposed interconnection agreement in full where the other party to arbitration has engaged in stalling and delay. *See In the Matter of: Petition of Brandenburg Telecom, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Verizon South Inc. Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Case No. 2001-224 (hereafter, "*Brandenburg Telecom*").

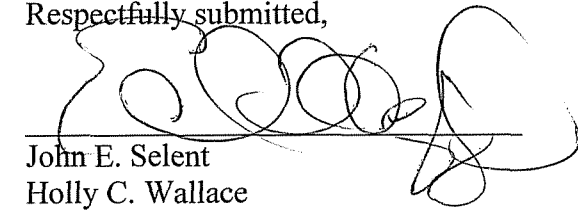
In *Brandenburg Telecom*, Brandenburg Telecom LLC ("Brandenburg") requested interconnection with Verizon. After the Commission ordered the parties to submit an executed agreement complying with the Commission's post-hearing order, Verizon refused to execute the compliant agreement. Brandenburg moved the Commission for an order approving Brandenburg's proposed interconnection agreement in full, arguing that Verizon's delay justified such a remedy. Verizon responded and the issue was fully briefed. Thereafter, the Commission ordered that unless the parties submitted an executed agreement within one week, Brandenburg's proposed agreement "shall become immediately effective and enforceable with or without the signature of Verizon." *See* January 8, 2002 Order, *Brandenburg Telecom*. Thus, the Commission demonstrated its power to approve one party's interconnection agreement in full with or without agreement of the other party.

The Commission should exercise that power here because of NTCH's failure to negotiate in good faith as required by Section 251 of the Act.

**CONCLUSION**

For the foregoing reasons, the Commission should approve the interconnection agreement submitted by Duo County in this proceeding. As demonstrated above, NTCH has thoroughly failed to negotiate in good faith. Accordingly, the Commission should reject any agreement proposed by NTCH and approve in full the agreement tendered by Duo County.

Respectfully submitted,



John E. Selent  
Holly C. Wallace  
Edward T. Depp  
**DINSMORE & SHOHL LLP**  
1400 PNC Plaza  
500 W. Jefferson Street  
Louisville, Kentucky 40202  
(502) 540-2300 (telephone)  
(502) 585-2207 (fax)

**COUNSEL TO DUO COUNTY  
TELEPHONE COOPERATIVE  
CORPORATION, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served via Federal Express, on this 4<sup>th</sup> day of August, 2006, to the following individual(s):

Kendrick R. Riggs, Esq.  
Douglas F. Brent, Esq.  
Stoll Keenon Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202  
kendrick.riggs@skofirm.com  
douglas.brent@skofirm.com

*Counsel to T-Mobile and Counsel to Verizon*

Mark R. Overstreet  
Stites & Harbison PLLC  
421 West Main Street  
P.O. Box 634  
Frankfort, Kentucky 40602-0634  
moverstreet@stites.com

*Counsel to AllTel*

John N. Hughes, Esq.  
Attorney at Law  
124 West Todd Street  
Frankfort, Kentucky 40601  
jnhughes@fewpb.net

*Counsel to Sprint PCS*

Holland N. McTyeire  
Greenbaum Doll & McDonald PLLC  
3500 National City Tower  
Louisville, Kentucky 40202  
HNM@gdm.com

*Counsel to ACC*

Tom Sams  
NTCH-West, Inc.  
1600 Ute Avenue, Suite 10  
Grand Junction, CO 81501

Bhodin M. Modi  
ComScape Telecommunications, Inc.  
1926 10<sup>th</sup> Avenue North  
Suite 305  
West Palm Beach, FL 33461



**COUNSEL TO DUO COUNTY  
TELEPHONE COOPERATIVE  
CORPORATION, INC.**