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Edward T. Depp  
502-540-2347  
tip.depp@dinslaw.com

August 15, 2008

**VIA HAND DELIVERY**

Hon. Stephanie Stumbo  
Executive Director  
Public Service Commission  
of the Commonwealth of Kentucky  
211 Sower Blvd.  
Frankfort, KY 40601

**Re: *In the Matter of: South Central Telcom LLC v. Windstream Kentucky East, Inc., Case No. 2008-00126***

Dear Ms. Stumbo:

Enclosed for filing in the above-referenced case, please find one original and eleven (11) copies of the Prefiled Rebuttal Testimony of Max Phipps on Behalf of South Central Telcom LLC. Please file-stamp one copy and return it to our courier.

Mr. Phipps's verification will be provided, soon, under separate cover.

Thank you, and if you have any questions, please call me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward T. Depp', with a stylized flourish at the end.

Edward T. Depp

ETD/lb

Enclosures

cc: John E. Selent, Esq. (w/encl.)  
All Parties of Record (w/encl.)

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1400 PNC Plaza, 500 West Jefferson Street Louisville, KY 40202  
502.540.2300 502.585.2207 fax www.dinslaw.com

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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE  
COMMISSION

SOUTH CENTRAL TELCOM LLC )

Complainant )

v. )

Case No. 2006-00448

BELLSOUTH TELECOMMUNICATIONS, )  
INC., D/B/A AT&T KENTUCKY )

Defendant )

PREFILED REBUTTAL TESTIMONY OF MAX PHIPPS  
ON BEHALF OF  
SOUTH CENTRAL TELCOM LLC

August 15, 2008

John E. Selent  
Edward T. Depp  
Holly C. Wallace  
**DINSMORE & SHOHL LLP**  
1400 PNC Plaza  
500 West Jefferson St.  
Louisville, Kentucky 40202  
Tel: (502) 540-2300  
Fax: (502) 585-2207

*Counsel to South Central Telcom LLC*

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

<b>SOUTH CENTRAL TELCOM LLC</b>	)	
<b>Complainant</b>	)	
v.	)	<b>Case No. 2006-00448</b>
	)	
<b>BELLSOUTH TELECOMMUNICATIONS,</b>	)	
<b>INC., D/B/A AT&amp;T KENTUCKY</b>	)	
<b>Defendant</b>	)	

**PREFILED REBUTTAL TESTIMONY OF MAX PHIPPS  
ON BEHALF OF  
SOUTH CENTRAL TELCOM LLC**

1   **Q.    WHAT IS YOUR NAME?**

2   A.    My name is Max Phipps.

3   **Q.    WHO IS YOUR EMPLOYER?**

4   A.    My employer is South Central Telcom LLC ("South Central").

5   **Q.    WHAT IS YOUR POSITION AT SOUTH CENTRAL?**

6   A.    I am the General Manager of South Central.

7   **Q.    HAVE YOU PREVIOUSLY CAUSED TESTIMONY TO BE PREFILED IN THIS**  
8 **CASE?**

9   A.    Yes, I have. That testimony was filed on or about July 15, 2008, and it sets forth my  
10 educational and professional background, as well as my duties and responsibilities at South Central.

11 **Q.    WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?**

12 A.    I am here to rebut the testimony of Ms. Patricia Pellerin, the witness testifying on behalf of  
13 BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T"). Her testimony identifies  
14 two types of traffic that AT&T claims to be delivering to South Central. First, she admits that  
15 AT&T delivers non-local, non-Extended Area Service ("EAS") traffic originated by its own end-  
16 users. She claims this constitutes approximately 2% of the total traffic AT&T delivers to South  
17 Central. Second, she claims that the remainder of the traffic that AT&T delivers to South Central is

1 third-party traffic. She claims that some of this traffic is CMRS traffic, that some of it is CLEC  
2 traffic, and that some of it is independent telephone company ("ICO") traffic. Regardless of who  
3 originates the traffic, one fact remains the same: AT&T is delivering the traffic to South Central  
4 over switched access facilities, and South Central is appropriately charging AT&T pursuant to its  
5 lawful and valid switched access tariffs for the services it provides in terminating those calls for  
6 AT&T.

7 **AT&T-Originated Traffic**

8 **Q. ASSUMING, FOR PURPOSES OF ARGUMENT, THAT AT&T'S DIVISION OF**  
9 **THIS TRAFFIC INTO TWO SUBSETS IS APPROPRIATE, HOW SHOULD SOUTH**  
10 **CENTRAL TREAT THE TRAFFIC ORIGINATED BY AT&T'S END-USERS?**

11 A. It should be treated exactly as we are currently treating it. That traffic is, by AT&T's own  
12 admission, neither local nor EAS traffic. Therefore, it must be toll traffic. They are delivering that  
13 traffic to us over switched access facilities, and we are billing AT&T for it pursuant to our lawful  
14 and approved switched access tariff. There is nothing to "jurisdictionalize," as AT&T claims, and  
15 there is no reason for our little CLEC to bear the significant transactional costs of negotiating a  
16 traffic exchange agreement when the rates and terms of our willingness to terminate AT&T's traffic  
17 are set forth in our lawful and approved tariffs.

18 **Q. IS AT&T A CERTIFICATED INTEREXCHANGE CARRIER?**

19 A. I do not know, but whether it is or is not an interexchange carrier ("IXC") makes little  
20 difference. Our switched access tariff applies to non-local, non-EAS traffic delivered to us over  
21 switched access facilities. This is precisely the type of traffic that AT&T is delivering to us, and it is  
22 doing so over switched access facilities. Accordingly, we are charging AT&T pursuant to our  
23 switched access tariff. The traffic in question is not local, and it is not EAS. Moreover, the service  
24 we provide in terminating this traffic on AT&T's behalf are the same services we provide for all  
25 other traffic delivered to us over our switched access facilities. AT&T's possession (or not) of a

1 certificate of public convenience and necessity to operate as in interexchange carrier in Kentucky is  
2 immaterial to that conclusion. AT&T is delivering switched access traffic to us, and we are charging  
3 it pursuant to our switched access tariff.

4 In fact, AT&T's entire argument regarding AT&T-originated traffic is nothing more than a  
5 variation on its long-running theme of claiming to "need" an agreement for the termination of access  
6 traffic to carriers. Back in the late-2002/early-2003 timeframe, AT&T's affiliate or predecessor-in-  
7 interest (I am not sure which), AT&T Communications of the South Central States, Inc., tried to  
8 avoid paying the tariffed, switched access charges of another small CLEC in the Commonwealth on  
9 the grounds that it had not "ordered" switched access services from the CLEC. (*See* Case No. 2002-  
10 00383; *In the Matter of Brandenburg Telecom LLC v. AT&T Corp.*) AT&T Communications of the  
11 South Central States, Inc. claimed that, because it had not "ordered" switched access services from  
12 the CLEC, it would need an agreement to address – among other things – any obligation to pay the  
13 CLEC for its calls. In addition, it accused the CLEC of refusing to negotiate an agreement for the  
14 exchange of this non-local, non-EAS traffic. It is my understanding that the Commission rejected  
15 those contentions and that it: (i) permitted the CLEC to continue billing pursuant to its filed and  
16 approved tariff; and (ii) determined that the CLEC was not required to enter into such an agreement.

17 AT&T's witness (Ms. Pellerin) makes the same claims here. She claims that "AT&T  
18 Kentucky will pay compensation once the parties execute a contract pursuant to which such  
19 payments can be made." (Direct Test. of P. Pellerin at 4:17-18.) In support of the fallacy that a filed  
20 and approved tariff cannot direct AT&T to pay for the services South Central is providing, she  
21 further claims that AT&T did not "order" switched access services from South Central. (*Id.* at  
22 16:18-20). She also claims that AT&T needs an agreement setting forth "the parameters, including  
23 rates for the exchange of AT&T Kentucky-originated traffic." (*Id.* at 28:16-17.) Ms. Pellerin is  
24 simply wrong.

1 By virtue of using switched access facilities to deliver non-local, non-EAS, AT&T-originated  
2 traffic to South Central, AT&T has submitted itself to the terms of South Central's filed and  
3 approved switched access tariff. That tariff already sets forth the "parameters, including rates" that  
4 are applicable to South Central's termination of this traffic. Therefore, AT&T should pay those  
5 tariffed charges for that traffic.

6 Requiring us to negotiate a traffic exchange agreement with respect to this traffic would be  
7 redundant to our tariff. It would also impose unnecessary and significant transactional costs upon us.  
8 But, let there be no mistake about it, AT&T's goal is not to address the "parameters" of exchanging  
9 this switched access traffic; it wants simply to strong-arm South Central into negotiating an access  
10 rate lower than its lawful tariffed rate. South Central is not willing to do so, and I hope the  
11 Commission will order AT&T to immediately cease this charade and pay its (still outstanding and  
12 still increasing) access bills for this traffic. In short, we do not need an agreement because we have a  
13 tariff. (To the extent that AT&T has previously claimed that it is willing to pay the same rate as we  
14 have tariffed, then that admission even further undercuts the alleged need for an agreement. If it is  
15 willing to pay that rate, then it should pay it, because that is what we have been charging.)

16 **Q. SO, HOW WOULD YOU SUMMARIZE SOUTH CENTRAL'S POSITION WITH**  
17 **RESPECT TO AT&T-ORIGINATED TRAFFIC?**

18 A. It is quite simple. AT&T is delivering non-local, non-EAS traffic to us over our switched  
19 access facilities. It should, therefore, pay South Central's tariffed switched access charges with  
20 respect to that traffic. We do not need a traffic exchange agreement to terminate this traffic, and I  
21 would ask the Commission not to order us to enter into one.

22 **Third-Party Traffic**

23 **Q. ONCE MORE, ASSUMING FOR PURPOSES OF ARGUMENT THAT AT&T'S**  
24 **DIVISION OF THIS TRAFFIC INTO TWO SUBSETS IS APPROPRIATE, HOW SHOULD**

1 **SOUTH CENTRAL TREAT THE SO-CALLED THIRD-PARTY TRAFFIC DELIVERED**  
2 **BY AT&T?**

3 A. At the outset, I need to clarify that the Commission really should not buy into AT&T's  
4 attempt to confuse this case by referring to so-called third-party "transit traffic." We know what  
5 "transit traffic" is, and this is not transit traffic. Transit traffic typically involves traffic exchanged  
6 by two carriers subtending the same tandem. Transit traffic does not involve a carrier who, through  
7 the strategic decision to offer inter-tandem services, inserts itself into the middle of an otherwise  
8 appropriately routed call. South Central does not subtend an AT&T tandem; South Central subtends  
9 the tandem of South Central Rural Telephone Cooperative Corporation, Inc. ("SCRTC"). AT&T,  
10 therefore, is not at all obligated to deliver any third-party traffic to South Central. If third-parties  
11 want to deliver traffic to South Central, they should be doing so through SCRTC (not AT&T). If,  
12 however, AT&T decides that it will nevertheless undertake to deliver this traffic contrary to typical  
13 routing protocols, it does so at its own risk (having voluntarily foregone any attempt to force the  
14 originating third-party to route the traffic appropriately). AT&T certainly should not be permitted to  
15 leverage its independent business decision into forcing South Central to absorb the significant,  
16 additional transactional and other costs associated with attempting to locate and bill those third-party  
17 carriers for the traffic.

18 (In fact, if AT&T would stop providing this voluntary inter-tandem delivery service, any  
19 third-party carriers originating calls to South Central would make arrangements (likely, through an  
20 interexchange carrier ("IXC")) to route the calls appropriately to South Central. And, unlike AT&T,  
21 the IXC would likely pay South Central tariffed switched access charges.)

22 We are a small operation, and if AT&T wants to deliver third-party traffic to us, we do not  
23 necessarily have a problem with that. We are a reasonable company, and we are open to reasonable  
24 and equitable arrangements addressing South Central's termination of any third-party traffic. The  
25 terms necessary to accomplish this are not complex, however, and to date (as Exhibit PHP-1 to Ms.

1 Pellerin's testimony clearly illustrates), AT&T has consistently ignored our position with respect to  
2 this issue.

3 We have previously seen the agreement Ms. Pellerin attached as Exhibit PHP-1 to her  
4 testimony, and as we have communicated to AT&T numerous times, it goes well beyond the scope  
5 of what is necessary to address South Central's termination of any inter-tandem traffic it may wish to  
6 deliver. First and foremost, the AT&T-proposed agreement includes provisions related to the  
7 termination of AT&T-originated traffic. As I have already explained, those terms are completely  
8 inappropriate and unnecessary, and we are not willing to waste our time negotiating an agreement  
9 for that traffic. Recognizing that AT&T may, in some cases, be serving as an intermediary for  
10 certain third-party traffic, however, we remain willing to discuss reasonable procedures related to the  
11 identification and billing of third-parties who may be attempting to deliver traffic to us through  
12 AT&T. In the end, however, any such arrangements must remain cost neutral to South Central.

13 **Q. UNTIL SUCH ARRANGEMENTS ARE IMPLEMENTED (IF EVER), SHOULD**  
14 **SOUTH CENTRAL'S SWITCHED ACCESS TARIFF APPLY TO THE THIRD-PARTY-**  
15 **ORIGINATED TRAFFIC AT&T CLAIMS TO HAVE IDENTIFIED?**

16 A. Yes, with one exception. Ms. Pellerin identifies essentially three types of third-party traffic  
17 that AT&T claims to deliver to South Central over the switched access facilities: (i) CMRS-  
18 originated traffic; (ii) CLEC-originated traffic; and (iii) ICO-originated traffic.

19 I will start with the exception: CMRS-originated traffic. South Central has not taken the  
20 position that CMRS-originated traffic is subject to South Central's switched access tariff.  
21 Accordingly, our monthly CABS bills to AT&T have excluded any switched access charges for this  
22 traffic, a fact that AT&T can easily verify because South Central has repeatedly stated that it uses  
23 AT&T-provided records to exclude this traffic. We have done so because our management team  
24 (which is also closely affiliated with South Central Rural Telephone Cooperative Corporation, Inc.  
25 ("SCRTC")) is familiar with the now-expired CMRS settlements agreement arising from Case No.



1 2003-00045, as well as the Commission's recent orders in what I refer to as the CMRS-RLEC  
2 arbitration proceedings (Case No. 2006-00215 and its sister cases). It is my general understanding  
3 that those arbitration orders require (much like the old CMRS settlements agreement did) SCRTC to  
4 bill a CMRS provider directly for certain de minimis volumes of traffic that may be delivered  
5 indirectly to SCRTC by AT&T. In light of those orders, we have acted in good faith to treat CMRS-  
6 originated traffic delivered to South Central in the same manner. Thus, we do not bill AT&T for  
7 CMRS-originated traffic it delivers to us. (I should note that we believe the CMRS-originated traffic  
8 constitutes the vast majority of the third-party traffic AT&T claims to deliver to us. Consequently,  
9 the bulk of the traffic AT&T is delivering to South Central is not in dispute at all, despite AT&T's  
10 insinuations to the contrary.)

11 In contrast to CMRS-originated traffic, AT&T should pay South Central's tariffed rates for  
12 the termination of any ICO-originated traffic. Aside from my earlier explanation of why ICO-  
13 originated traffic is not – as AT&T characterizes it – "transit traffic," I should note that this traffic is  
14 not really even "third-party" traffic. AT&T (not some third-party carrier) is the actual toll-provider  
15 for this traffic. In fact, I am baffled by Ms. Pellerin's testimony on this issue because AT&T has  
16 previously and directly contradicted her testimony in at least two other instances. First, Ms. Pamela  
17 A. Tipton (Director, Regulatory and External Affairs) has previously testified, "Under the [Kentucky  
18 Restructured Settlement Plan ("KRSP")], [AT&T] functions as the intraLATA toll provider for  
19 traffic originated by certain KRSP ICO end users." (*See Direct Test. of P. Tipton at 9:7-9; Case No.*  
20 *2005-00371; In the Matter of the Petition of MCI/metro Access Transmission Services, LLC for*  
21 *Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth*  
22 *Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications*  
23 *Act of 1996.*) Ms. Tipton's testimony on behalf of AT&T in that matter went on to agree that  
24 "[w]hen [AT&T] is the intraLATA toll provider pursuant to the KRSP, the Parties agree that  
25 MCI/Verizon Access should bill [AT&T] the appropriate terminating switched access rate pursuant

1 to MCI/Verizon Access' tariff." (*Id.* at 10:16-19.) Second, I believe that AT&T's existing  
2 interconnection agreement (effective June 30, 2005) with CenturyTel Acquisition, Inc. d/b/a KMC  
3 Telecom III LLC similarly provides as follows:

4 Attachment 3, Section 10.12:

5  
6 10.12.1 Where [AT&T] is the primary intraLATA toll  
7 provider for an ICO's customers (i.e., [AT&T] receives from the ICO  
8 the intraLATA toll revenue paid by the customers) and where such  
9 ICO originates an intraLATA toll call that transits [AT&T]'s network  
10 and is terminated by KMC Data... KMC Data will bill [AT&T] at  
11 KMC Data's intrastate switched access rate as set forth in KMC  
12 Data's access tariff as filed and effective with the Commission....

13  
14 (*Id.*). Consequently, AT&T should be paying us our tariffed switched access rates for ICO-  
15 originated traffic.

16 Finally, AT&T should also pay South Central's tariffed switched access rates for terminating  
17 CLEC-originated traffic. AT&T's claims that the traffic was originated by another carrier and that it  
18 receives no end-user revenue for the traffic is immaterial. In fact, all of AT&T's arguments ignore  
19 the "elephant in the corner." AT&T voluntarily chose to place itself in the intermediary position  
20 with respect to any CLEC-originated traffic it may deliver to South Central, and it did so without  
21 making any effort to ensure that South Central would not suffer any injury as a result.

22 Normally, South Central would expect a direct relationship with whatever carrier delivers  
23 traffic to it. Here, however, AT&T has voluntarily inserted itself between that third-party and South  
24 Central. Presumably, AT&T did this because it saw a business opportunity to create additional  
25 revenue streams for itself by making its network available to other carriers. And although AT&T  
26 could have avoided this entire dispute regarding CLEC-originated traffic by demanding that CLECs  
27 route their traffic to the SCRTC tandem (rather than an AT&T tandem), South Central takes no  
28 issue, generally, with AT&T attempting to leverage the ubiquity of its network to improve its  
29 revenues and streamline network configurations around the Commonwealth.

1           However, South Central does take issue with AT&T's recklessness in making that network  
2 available to other carriers. For instance, prior to accepting CLEC traffic for delivery to South  
3 Central, AT&T could have demanded that the originating carrier provide it with written  
4 acknowledgement of its existing billing arrangements with South Central and its responsibility to  
5 compensate South Central for terminating its traffic. AT&T did not do so. AT&T could have  
6 refused to transit the traffic (thereby protecting South Central from this very situation) until such  
7 arrangements existed. Again, it did not do so. Rather, AT&T simply "opened the flood gates" to  
8 CLEC-originated traffic without any regard to the effects it would have upon South Central and  
9 without any safeguards to ensure that South Central is appropriately compensated for the delivery of  
10 this traffic.

11           Short of those types of safeguards, South Central bills for switched access based upon the  
12 identity of the carrier delivering the traffic to it over switched access facilities: AT&T, in this case.  
13 If AT&T wants to assume the business risk of providing the inter-tandem delivery service giving rise  
14 to this dispute, then it should be responsible to pay our tariffed switched access rates. We are not  
15 suggesting that AT&T will bear the ultimate cost of South Central's termination of this traffic. After  
16 all, AT&T can still seek reimbursement from any CLECs that hand-off the traffic to AT&T for  
17 transiting. But, AT&T – not South Central – is in the best position to do that, as it is the carrier with  
18 the direct relationship to the originating CLEC.

19           It seems to me that discussions like this always seem to end up involving the principle of the  
20 "cost causer" paying for the costs it has caused. AT&T is clearly the "cost causer" in this scenario.  
21 AT&T holds itself out as the provider of inter-tandem delivery services. It takes calls from an  
22 originating carrier, and it hands them off to South Central. South Central is a passive participant in  
23 this process; it simply receives the call that AT&T delivered to it. Had AT&T not inserted itself into  
24 this process, there would be no switched access charges (for CLEC-originated traffic) for AT&T to  
25 dispute. However, by virtue of its causing South Central to provide this terminating service, AT&T

1 should be responsible for paying South Central's tariffed switched access charges applicable to that  
2 traffic. Whether and how AT&T goes about recouping those charges from originating CLECs is not  
3 our concern. We simply want to be paid for the traffic that AT&T delivered to us, and our tariff sets  
4 the rates we charge for doing so. Any other solution simply imposes too many costs on South  
5 Central.

6 **Q. WILL YOU PLEASE SUMMARIZE YOUR POSITION WITH RESPECT TO ALL**  
7 **OF THE SO-CALLED "THIRD PARTY" TRAFFIC THAT AT&T CLAIMS TO BE**  
8 **DELIVERING TO SOUTH CENTRAL?**

9 A. In summary, our position with respect to all of the so-called "third-party" traffic is as follows.  
10 We are already excluding CMRS-originated traffic from AT&T's CABS bills. Accordingly, there is  
11 no dispute with respect to CMRS-originated traffic (which involves the vast majority of the so-called  
12 "third-party" traffic). AT&T should be paying our CABS bills with respect to any ICO-originated  
13 traffic because it is the toll carrier for that traffic. AT&T should also be paying our CABS bills with  
14 respect to any CLEC-originated traffic because AT&T is the carrier delivering the traffic to us, and  
15 we should not be forced to bear the uncertainties and extra expenses involved in attempting to  
16 discover and bill any third-parties having a direct relationship with AT&T (but not us).

17 \*\*\*\*\*

18 **Q. HOW DOES SOUTH CENTRAL RECOMMEND THAT THE COMMISSION**  
19 **RESOLVE THIS ENTIRE DISPUTE?**

20 A. South Central respectfully requests that the Commission issue an order that: (i) AT&T is  
21 liable for all past and future switched access service charges incurred pursuant to South Central's  
22 filed and approved tariffs; and (ii) AT&T must pay all unpaid, tariffed charges billed by South  
23 Central. We further request that the Commission reject AT&T's unfounded demands that South  
24 Central execute an interconnection agreement for the exchange of the traffic at issue in this dispute.

1 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

2 A. Yes.



**CERTIFICATE OF SERVICE**

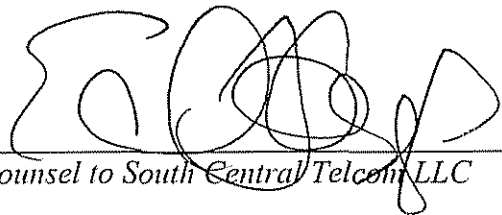
It is hereby certified that a true and accurate copy of the foregoing was served by first-class United States mail, sufficient postage prepaid, on the following individuals this 15th day of August, 2008:

Mary K. Keyer, Esq.  
General Counsel/Kentucky  
601 W. Chestnut Street  
Room 407  
Louisville, KY 40232

*Counsel for BellSouth Telecommunications, Inc.*

Lisa Foshee, Esq.  
J. Philip Carver, Esq.  
Suite 4300  
675 West Peach Tree Street, NW  
Atlanta, GA 30375

*Counsel for BellSouth Telecommunications, Inc.*



*Counsel to South Central Telecom LLC*