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February 23, 2007

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

RECEIVED  
FEB 26 2007  
PUBLIC SERVICE  
COMMISSION

**RE: Petition under KRS 278.512 for Exemption from Annual Reporting Requirements**

Dear Ms. O'Donnell:

Case No. 2007-00084

Enclosed please find an original and ten copies of a petition for exemption we are filing on behalf of Competitive Carriers of the South, Inc. ("CompSouth"). This petition asks the Commission to relieve all non-dominant providers of telecommunications services, including all CLECs and IXCs, from the requirement to file annual reports. As we explain in the petition, the large incumbent providers in Kentucky are no longer required to file these reports, and CompSouth believes there are good grounds for the Commission to relieve competitive carriers from these filing requirements. Given that annual reports would otherwise be due at the end of March, we request that the Commission give expedited consideration to this petition.

Please indicate receipt of this filing by your office by placing your file stamp the extra copy and returning to me via the enclosed, self-addressed stamped envelope.

Thank you for your assistance in this matter.

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

cc: Assistant Attorney General Dennis Howard II

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF COMPSOUTH )  
PURSUANT TO KRS 278.512 FOR AN )  
EXEMPTION FOR COMPETING LOCAL )  
EXCHANGE CARRIERS AND INTER- )  
EXCHANGE CARRIERS FROM THE )  
REQUIREMENTS OF 807 KAR 5:006(3) )

CASE NO. 2007-00084

**RECEIVED**

FEB 26 2007

PUBLIC SERVICE  
COMMISSION

**PETITION**

Competitive Carriers of the South, Inc. (“CompSouth”),<sup>1</sup> pursuant to KRS 278.512, hereby petitions the Commission for an exemption for non-dominant telecommunications providers, including competing local exchange carriers (“CLECs”) and interexchange carriers (“IXCs”), from the annual report filing requirement of 807 KAR 5:006(3).<sup>2</sup> As more fully stated below, the standards for exemption as stated in the statute and as more fully described in Commission Orders are fully met. The exemption will serve the public interest by conserving the Commission’s administrative resources and by relieving non-dominant telecommunications carriers operating in Kentucky of the need to expend resources in preparing and filing the annual report that concerns facilities and current business conditions and that is currently required by 807 KAR 5:006(3).

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<sup>1</sup> CompSouth’s members are ACCESS Integrated Networks, Inc., Access Point, Inc., Cavalier Telephone, Cbeyond Communications, Covad Communications Company, Dialog Telecommunications, Inc., FDN Communications, DeltaCom, Level 3 Communications, Momentum Telecom, Inc., NuVox Communications, Inc., Time Warner Telecom, and XO Communications. At least nine of CompSouth’s members currently provide service in Kentucky.

<sup>2</sup> Granting CompSouth’s request would not affect the obligation to file the gross operating revenue reports required by KRS 278.140.

CompSouth does not anticipate that this Petition will result in controversy. This is particularly true given the expansive regulatory exemptions granted by the General Assembly even to incumbent local exchange carriers. However, CompSouth has served a copy of this Petition upon the Attorney General, Office of Rate Intervention, so that the consumers' representative before this Commission will be fully on notice of the issues raised herein.

In order that the relief requested herein might benefit all non-dominant carriers currently required to file an annual report for 2006 operations, CompSouth respectfully requests that the Commission:

- 1) promptly issue a proposed order granting the exemption requested herein effective for annual reports otherwise due on March 31, 2007;
- 2) provide notice and opportunity for comment on the proposed order; and
- 3) provide that, in the absence of a request for hearing the order shall become effective on March 31, 2007.

#### **I. THIS PETITION MEETS THE STATUTORY STANDARDS**

1. In 1992, the General Assembly found that the growth of competition in telecommunications services and the accompanying need for regulatory flexibility mandated a statutory procedure by which the Commission would be authorized to exempt telecommunications providers from regulation if certain standards were met. KRS 278.512. The factors that must be considered in the context of a petition for exemption include the following: (a) the extent to which competing services are available; (b) the existence of functionally equivalent services; (c) the number of competitors; (d) the overall impact on service and rates; (e) the existence of safeguards to prohibit cross-

subsidization; (f) the impact of the proposed regulatory change upon universal service and ability to respond to competition; (g) the possibility that a proposed regulatory change would inhibit a regulated utility from competing; and (h) the impact on customers. KRS 278.512(3). Paragraph (3)(i) of that section also encourages the Commission to consider “[a]ny other factors” that affect the public interest.

2. It is clear that all of these factors, including the general public interest factor, support the Petition. The Commission has treated both CLECs and IXC as non-dominant carriers for purposes of reducing regulatory oversight for some time.<sup>3</sup> The IXC market has been competitive for years, and a CLEC is, by definition, providing services for which another provider (the incumbent) is available. Consequently, such KRS 278.512 issues as impact on rates, subsidization of regulated by unregulated services, and ability to respond to competition have already been determined by the Commission to be irrelevant to, or in favor of, reduced regulation of CLECs and IXCs. In 1996, the Commission ceased to require a certificate for initial operations of IXCs.<sup>4</sup> In 1998, the Commission determined that it was unnecessary, pursuant to KRS 278.512, to require an initial operations certificate for CLECs.<sup>5</sup>

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<sup>3</sup> See, e.g., *In the Matter of Investigation of the Failure of Certain Non-Dominant Telecommunications Providers to File Reports of Gross Operating Revenues or to Pay Assessments Pursuant to KRS 278.140*, PSC Case No. 2000-383 (Aug. 10, 2000) (holding that, because telecommunications is competitive and because “regulatory oversight over such carriers is minimal,” those non-dominant carriers that had failed to file reports of gross earnings necessary to the assessment process would not be subject to enforcement action but would be permitted simply to cease operating in Kentucky).

<sup>4</sup> *Exemptions for Interexchange Carriers, Long-Distance Resellers, Operator Service Providers and Customer-Owned, Coin-Operated Telephones*, PSC Admin. Case No. 359 (June 21, 1996) (“June 1996 IXC Order”).

<sup>5</sup> *Exemptions for Providers of Local Exchange Service Other Than Incumbent Local Exchange Carriers*, PSC Admin. Case No. 370 (Jan. 8, 1998) (“January 1998 CLEC Order”).

The rates of non-dominant carriers are also set by notice filing rather than by rate case pursuant to KRS 278.190.<sup>6</sup>

3. Nor does (or should) the Commission exercise today the sort of oversight over a non-dominant carrier's operations and financial well-being that it once exercised over monopoly telecommunications utilities whose customers lacked competitive choices for reliable, adequate, and reasonably-priced service. Accordingly, the Commission does not require, pursuant to KRS 278.020, that an acquirer of an existing non-dominant telecommunications provider prove it has the managerial, technical, and financial capacity to operate a utility.<sup>7</sup> Nor does the Commission require proof of demand for a service before it will permit construction of a non-dominant carrier facility under KRS 278.020, or review a non-dominant carrier's decision to issue evidences of indebtedness pursuant to KRS 278.300.<sup>8</sup> Given the lack of necessity to exercise oversight over a non-dominant carrier's financial decisions, construction decisions, or fiscal condition in general, there does not seem to be any public interest imperative that is served by the continued filing by non-dominant carriers of annual reports containing details of their physical facilities and business affairs.

4. As for the remaining KRS 278.512 factors, granting non-dominant carriers relief from the annual report requirement in 807 KAR 5:006, Section 3 will have no

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<sup>6</sup> See, e.g., *Exemptions for Providers of Local Exchange Service Other Than Incumbent Local Exchange Carriers*, PSC Admin. Case No. 370; *Exemptions for Interexchange Carriers, Long-Distance Resellers, Operator Service Providers and Customer-Owned, Coin-Operated Telephones*, PSC Admin. Case No. 359 (Consolidated Order, Aug. 8, 2000), at 3 (interexchange rates changeable on one day's notice and local rates changed on thirty); Cf. KRS 278.544(1) (permitting tariffs for nonbasic services to become valid effective upon the date stated in the schedule).

<sup>7</sup> January 1998 CLEC Order; June 1996 IXC Order.

<sup>8</sup> *Id.*

effect on universal service; will not inhibit any utility from competing; and will not adversely affect service or rates for any customers.

5. The statutory standards have been met, and the Petition should be granted.

## **II. GRANTING THE PETITION WILL SERVE THE PUBLIC INTEREST**

6. It is unnecessary to remind the Commission of the sweeping changes that have taken place in the telecommunications market and its regulatory environment in the fifteen years since KRS 278.512 was enacted. Those years have seen the passage of the Telecommunications Act of 1996, which opened all monopoly telephone markets to competition. The past fifteen years have also seen the entry of numerous Orders by this Commission that were premised upon the public interest concerns underlying promotion of the competitive market, as well as upon the recognition that regulatory flexibility is absolutely necessary during the transition from a monopoly paradigm. The public interest will be served by relieving the obligation currently imposed upon non-dominant carriers to file annual reports pursuant to 807 KAR 5:006(3).

7. Probably the most extraordinary change in telecommunications regulation during those years is the passage of 2006 House Bill 337, codified at KRS 278.541 *et seq.* Under the provisions of the new statutory scheme, even a market-dominant carrier may opt out of numerous statutory requirements, including “any rules, orders or regulations of the commission requiring the retention or filing of financial reports...” KRS 278.543(6). Kentucky’s three largest incumbent carriers have already availed themselves of this streamlined regulation,<sup>9</sup> and are already exempt from filing any annual reports for

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<sup>9</sup> See, e.g., Letter from Joan A. Coleman, BellSouth Telecommunications, Inc. to Elizabeth O’Donnell, July 12, 2006, attached as Exhibit 1 (giving notice of election under KRS 278.543(1)). Cincinnati Bell Telephone Company, Windstream Kentucky East, and Windstream Kentucky West each filed similar notices of election on July 12, 2006.

operations during 2006 or subsequent years. Under the circumstances, the public interest is served by removing non-dominant carriers' current obligation to file such reports as well.

### CONCLUSION

For the foregoing reasons, CompSouth respectfully requests that its Petition be granted.

Respectfully submitted,



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C. Kent Hatfield  
Douglas F. Brent  
Deborah T. Eversole  
STOLL KEENON OGDEN PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202  
Telephone: (502) 333-6000  
Counsel for Petitioner

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the following, this 23<sup>rd</sup> day of February, 2007.

Dennis Howard, II  
Acting Director  
Office of Rate Intervention  
Office of the Attorney General  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601



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Counsel for Petitioner







BellSouth Telecommunications, Inc.  
601 W. Chestnut Street  
Room 410  
Louisville, KY 40203

[Joan.Coleman@bellsouth.com](mailto:Joan.Coleman@bellsouth.com)

Joan A. Coleman  
Vice President  
Regulatory & External Affairs

502-582-2167  
Fax 502-582-2140

July 12, 2006

**RECEIVED**

JUL 12 2006

PUBLIC SERVICE  
COMMISSION

Ms. Elizabeth O'Donnell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40602

Re: House Bill 337

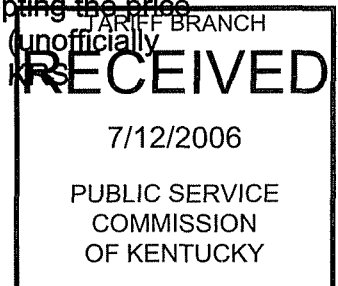
Dear Ms. O'Donnell:

House Bill 337 ("HB 337") was passed by the Kentucky General Assembly on April 10, 2006 and signed by Governor Fletcher on April 16, 2006. The effective date of this legislation is July 12, 2006. HB 337 creates four new sections of KRS 278 and amends KRS 278.010. The Legislative Research Commission has advised that new statutory citations will be published on or about July 16, 2006. However, BellSouth has learned unofficially that HB 337 will be cited as follows: Section 1, KRS 278.541; Section 2, KRS 278.542; Section 3, KRS 278.543; Section 4, KRS 278.544; and Section 5, KRS 278.010.

Among other critical aspects of the new statutes, HB 337 addresses dramatic competitive changes in the telecommunications markets in Kentucky by permitting telephone utilities to elect a new price regulation plan outlined in the statute. This new form of price regulation for companies such as BellSouth creates a price cap for "basic service" single line business and residential customers for sixty-months following the election date of a telephone utility. On this date, BellSouth is therefore electing this regulatory option available under HB 337 and gives notice as follows:

NOTICE

Pursuant to HB 337, Section 3(1) (unofficially KRS 278.543(1)), BellSouth Telecommunications, Inc. hereby gives written notification of election adopting the price regulation plan set forth in HB 337 Sections 3(2), 3(3), 3(4), 3(5) and 3(6) (unofficially KRS 278.543(2), KRS 278.543(3), KRS 278.543(4), KRS 278.543(5) and KRS 278.543(6)).



Ms. Elizabeth O'Donnell  
July 12, 2006  
Page 2

Also pursuant to HB 337 Section 2(2)(a)(b) and (c) (unofficially KRS 278.542(2)(a)(b) and (c)) BellSouth provides the following required information:

- (a) The complete name of the telephone company providing this notice is:

BellSouth Telecommunications, Inc.

- (b) The physical address of BellSouth Telecommunications, Inc.'s principal office in the Commonwealth of Kentucky is:


601 West Chestnut Street  
Louisville, Jefferson County, Kentucky 40203

- (c) The name, title and telephone number of the person responsible for answering consumer complaints on behalf of BellSouth Telecommunications, Inc. is:

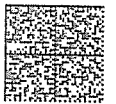
Joan Duncan  
Manager, Regulatory and External Affairs  
601 West Chestnut Street  
Louisville, KY 40203  
(502) 582-8416

Finally, BellSouth Telecommunications, Inc. files herewith tariff revision to its Transition Regulation Plan (A36) to conform its current regulation plan to the provisions of HB 337 regarding basic and wholesale services, as well as service objectives, financial reporting requirements and complaint procedures. All other services are deemed deregulated as a result of HB 337, and are therefore no longer appropriately included in BellSouth's price regulation plan.

Very truly yours,

  
Joan A. Coleman





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 PUBLIC SERVICE  
 COMMISSION

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