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SEP 23 2008

PUBLIC SERVICE
COMMISSION

September 22, 2008

Via Overnight Express Mail
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Federal Express Tracking Number:
8641 4641 1186

Re: *Case No. 2008-00351;*
Application Of CoreTel Kentucky, Inc. For Approval Of Interconnection
Agreement Between Southwestern Bell Telephone Company d/b/a AT&T
Kansas And CoreTel Kansas Pursuant To AT&T Merger Conditions

Greetings:

Enclosed are the original and five (5) copies of the CoreTel Kentucky, Inc.'s reply to the response filed by BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky"), pursuant to the Commission's procedural order dated September 15, 2008.

The enclosed Reply further supports CoreTel Kentucky's application for Commission approval of an interconnection agreement between Southwestern Bell Telephone Company d/b/a AT&T Kansas and CoreTel Kansas, pursuant to CoreTel Kentucky's right under the AT&T Merger Conditions.

Respectfully submitted,

MIDDLETON REUTLINGER

Scot A. Duvall
Counsel for CoreTel Kentucky, Inc.

cc: Mary K. Keyer, Esq.
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SEP 23 2008

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF CORETEL KENTUCKY,)
INC. FOR APPROVAL OF)
INTERCONNECTION AGREEMENT)
BETWEEN SOUTHWESTERN BELL)
TELEPHONE COMPANY D/B/A AT&T)
KANSAS AND CORETEL KANSAS)
PURSUANT TO AT&T MERGER)
CONDITIONS)

CASE NO. 2008-00351

CORETEL KENTUCKY’S REPLY TO AT&T KENTUCKY’S RESPONSE

Applicant, CoreTel Kentucky, Inc. (“CoreTel” or “CoreTel Kentucky”), pursuant to the Commission’s procedural order dated September 15, 2008, submits this reply to the response filed by BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (“AT&T” or “AT&T Kentucky”) by letter dated September 3, 2008 (the “AT&T Letter”).

CoreTel would like to take this opportunity to correct some of the misstatements in the AT&T Letter and to recommend that AT&T be required finally to comply with the requirements of the AT&T Merger Order. AT&T has an opportunity on October 1, 2008 to provide to CoreTel and to the Commission the basic explanation that CoreTel has sought since June 23, that is, the Kentucky-specific technical or legal impediments to CoreTel’s adoption of the AT&T Kansas agreement in Kentucky.

I. Response to AT&T Letter

Despite the fact that three months have passed since CoreTel’s June 23, 2008 request to port the Kansas Agreement to Kentucky under the AT&T Merger conditions, AT&T has failed

to allow the porting of the Agreement and has failed to provide a detailed explanation, as required by the Merger Conditions, as to why the Kansas Agreement should not be ported in its current form. Despite repeated requests, CoreTel still has not received from AT&T any detailed justification for the extensive changes AT&T insists on making to the Kansas Agreement CoreTel is attempting to port to Kentucky. In fact, AT&T has tried to transform what should be a routine porting process into a comprehensive and extremely time-consuming renegotiation of virtually every section of the Agreement. It is worth noting that with other carriers, AT&T has dragged this process out to last over a year. AT&T's delay strategy is an unacceptable response to a merger condition aimed at "reducing transaction costs associated with interconnection agreements." The process established by AT&T seems, if anything, designed to increase transaction costs.

From the outset, AT&T has dictated the manner in which the porting process will proceed. On June 23, CoreTel requested to port the Kansas Agreement to the 21 other states in the AT&T region. Early on in the process, AT&T asked whether CoreTel wanted one agreement to cover all the states. CoreTel stated that it had requested to port the Kansas Agreement to 21 states, which would require the production of 21 agreements with state-specific reasons why any particular Kansas interconnection arrangements would violate state-by-state requirements. Yet AT&T plowed ahead with a single agreement to cover all the states and, not surprisingly, when the redlines were ultimately produced, they included virtually no detailed references to state rules or requirements that would prohibit the porting of the Kansas arrangements. CoreTel repeatedly told AT&T over the last three months that it objected to AT&T's failure to offer state-specific justifications. Yet AT&T continued on its chosen course.

CoreTel also indicated early on that it was expecting agreements to be rolled out state-by-state, such that within a matter of weeks, if not days, complete state agreements would be rolling off the presses. Instead, AT&T took a section-by-section approach which guaranteed that *none* of the 21 agreements would be completed until the very last section was reviewed. The result was that it took two months for any complete redline to be finalized.

AT&T also complains in its letter that it has inadequate resources to port agreements on a timely basis. AT&T had \$118B in total revenues last year and net income of \$11.95B. AT&T cannot be heard to complain that it lacks resources. This is particularly true where it is only being asked to fulfill an obligation that it *voluntarily* committed to in order to conclude its merger.¹

AT&T has only itself to blame for its lengthy delays. The only reason that AT&T takes over two months to turn around even one state redline is because of its own expansive interpretation of the task at hand and its deliberately laborious process for accomplishing it. The Merger Commitment requires a wholesale porting of an agreement except where there are particular arrangements that would violate requirements of the port-to state. As discussed further below, AT&T has used this safety valve as a springboard to conduct a time-consuming, wholesale renegotiation of the Kansas Agreement.

Most importantly, the overarching tone of the AT&T Letter -- that somehow negotiations are going very smoothly but we just need more time -- is completely disingenuous. It took over two months for AT&T to produce even a single agreement for porting. Now AT&T wants to sit down and go line-by-line through a series of vaguely-worded redlines for another undetermined period of time, all the while keeping CoreTel from doing any business whatsoever in Kentucky --

¹ This was not any ordinary merger but one that combined the assets of the companies formerly known as AT&T, BellSouth, Southwestern Bell, Ameritech, Pacific Bell, SNET, AT&T Wireless, Cingular, Cellular One, and BellSouth Mobility, among others.

and all under the rubric of reducing transaction costs associated with interconnection arrangements.

It is particularly surprising that AT&T does not see a need for PSC intervention in the discussions between AT&T and CoreTel because AT&T participated in a call on August 21, 2008 where it became clear that the parties had reached an impasse. It soon became clear on that call that while AT&T wanted to wade through a litany of unsubstantiated changes in an ongoing series of meetings, CoreTel wanted AT&T first to identify in writing specifically what changes needed to be made to the Agreement with specific and detailed explanations tied back to the AT&T Merger Conditions. When it became clear that the parties were at loggerheads, the call was concluded and no future meetings were scheduled. It is therefore surprising that AT&T would two weeks later claim that no PSC action is necessary at this time.

The AT&T Letter suggests that CoreTel is not satisfied because AT&T has made changes to the Agreement. Certainly, a brief amendment providing for routine name changes and other minor modifications could be expected. But CoreTel did *not* anticipate the extensive revisions provided by AT&T, and CoreTel was even more concerned about what AT&T *failed* to provide: detailed explanations as to how the proposed changes could be legitimately tied back to the AT&T Merger Conditions. In several cases, AT&T has made sweeping changes without any effort at all to tie them back to the Merger Conditions. In other cases, the explanations are so vague as to be meaningless. Here are a few examples:

- In its first redline on July 29, 2008, AT&T struck the entire 14-page Appendix Collocation with the following explanation: “For ease of provisioning and to provide one consistent position for each of the port to states, AT&T is striking the Appendix Collocation from the port from state and replacing with the 22-state generic Collocation Appendix. . . . If CoreTel would like to avail itself of the individual state rulings, we will be happy to prepare the contract in that way.” Note that there is no reference to the Merger Conditions, nor to any state ruling that would preclude AT&T

from offering the Kansas collocation arrangements in Kentucky (or any other state). CoreTel objected to this change in writing on August 6, but AT&T has not admitted that this section is perfectly portable, nor produced the alternative markups it said it would be “happy to prepare.”

- In another July 29, 2008 redline of the General Terms and Conditions, AT&T altered the Kansas Agreement based upon changes in AT&T “company policy”: “Company policy now includes rating of A- or better.” The self-insurance provisions were also marked up unilaterally by AT&T “for clarity.” And the escrow provisions were matched to AT&T standard provisions in 6 states with no explanation whatsoever. Because of these and a number of other “out-of-bounds” redlines, although CoreTel immediately conducted a careful review of the redlines, CoreTel is not inclined to spend additional time in an extensive series of meetings and conference calls parsing through AT&T’s wish list of things it wishes were not included in the Kansas Agreement that it has committed to the FCC to port.
- Also very common throughout the redline are vague comments such as “state specific provisions which do not port.” Such comments are often used to change critical portions of the Kansas Agreement. Another common comment used to make sweeping changes: “State specific network attributes and limitations: language added to address specific network configurations in Southeast 9states [sic].” These comments make no reference to state-specific orders or regulations that would preclude AT&T from offering the Kansas Agreement interconnection arrangements in Kentucky (or other states).

Given AT&T’s cavalier approach to the Merger Condition implementation process and the vague redlines it took two months to produce, it is understandable that AT&T would ask the PSC to take “no further action” at this time. But CoreTel respectfully requests the PSC’s continued involvement to ensure the expedited processing of the Kansas Agreement.

II. CoreTel’s Pending Request for AT&T’s List of Kentucky-Specific Technical and Legal Impediments to Porting the Kansas Agreement

In the interests of moving this process forward, CoreTel Kentucky has already submitted the Kansas Agreement intact for approval by the Kentucky Commission. CoreTel believes that approval of the full agreement is still the best course, particularly given that AT&T has already engaged in three months of delay. During those three months, AT&T has radically redrafted the

Kansas Agreement in an attempt to engage CoreTel in a wholesale renegotiation of that agreement. In addition, if AT&T were a willing interconnection partner, the Agreement could have been approved as filed by CoreTel Kentucky, and the types of changes raised by AT&T could easily have been worked out at the operational level.

However, given that AT&T is not going to take such a cooperative approach, in an effort to resolve this dispute and to complete the porting of the Kansas Agreement to Kentucky as soon as possible, CoreTel Kentucky is willing to accept the vast majority of the revisions proposed by AT&T in its redlines, including all of the changes to over 20 sections of the Agreement.² CoreTel Kentucky makes this submission with the critical caveat that it does not believe that the AT&T changes accepted by CoreTel – which include a litany of changes that go far beyond the ambit of the AT&T Merger Conditions – represent an appropriate application of the standard agreed to by AT&T in the AT&T Merger Conditions. CoreTel Kentucky does not waive its right to argue that AT&T is misinterpreting that standard if this dispute lingers on in Kentucky or in other state or federal proceedings.

In an effort to move forward and enter the Kentucky markets as soon as possible, CoreTel has accepted the vast majority of AT&T's changes because they have minimal impact on CoreTel's business plan. This concession is not without cost to CoreTel Kentucky. By allowing these sweeping changes to the Agreement, CoreTel is permitting significant changes to, for example, the resale and unbundling portions of the Agreement. These changes will water down

² Although it is not in CoreTel's interest to do so, CoreTel is willing to accept the redlined changes AT&T has proposed to most of the sections of the Kansas Agreement. CoreTel accepts, without waiving any rights or positions, nor conceding that such changes were necessary to port the Kansas Agreement, the AT&T Kentucky-proposed changes to the following attachments to the Kansas Agreement: Resale Attachments 1-5 and all Resale Appendices; UNE Attachments 6-8 and 10, and all related appendices and exhibits; Appendix Poles, Conduits, and ROW; Attachments 14, 16; Attachment 17 and associated Commission-approved Performance Measures; Attachments 18, 19, 20C, 21-23; xDSL Attachment 25 and its appendices; OSS Attachment 27; and the Kentucky Pricing Schedule. CoreTel also reserves its right to conduct a final review of these attachments.

the Agreement, and make it a much less valuable agreement should CoreTel at some point see a need to pursue a resale or UNE strategy. However, CoreTel is willing to make these concessions because it believes they will expedite the porting of the Kansas Agreement.

Aside from routine name changes and other routine revisions, CoreTel is not willing to accept AT&T's unsubstantiated changes to critical sections such as the General Terms and Conditions ("GT&C"), the Appendix Collocation; Attachment 11: Network Interconnection Architecture, and its appendices Interconnection Trunking Requirements and Network Interconnection Methods; Attachment 12: Intercarrier Compensation; Attachment 15: E911; and Attachment 24: Recording-Facilities-Based. CoreTel will refer to all of these critical interconnection sections, including the GT&C, collectively as the Critical Attachments.

In accepting widespread changes to the Kansas Agreement, CoreTel has made a major concession. After three months, it is now time, if AT&T intends to continue to insist upon changes to the Critical Attachments, finally to offer in its upcoming October 1, 2008 filing, a Kentucky-specific rationale for each of the changes it still requires, specifically tied back to the AT&T Merger Condition requirements. If the Commission entertains any further alterations to the CoreTel Agreement by AT&T, the Commission should require that AT&T submit *detailed* support for each change. According to the FCC's Merger Order, if AT&T submits that it "should not be obligated to provide . . . any interconnection arrangement or UNE," it must first demonstrate:

- 1) that it is not technically feasible to provide that arrangement due to specific:
 - a) technical;
 - b) network; or
 - c) OSS attributes and limitations in Kentucky; or

2) that it is inconsistent with:

- a) the laws; or
- b) the regulatory requirements of Kentucky.

If AT&T relies upon the first prong, it should not be sufficient that AT&T merely parrot back to the Commission the verbiage of the FCC Order ('changes made due to network limitations' or 'changes made due to OSS limitations'). Instead, AT&T must provide a detailed and in depth explanation as to why it would be technically impossible for AT&T to provide the interconnection arrangements in Kentucky, *especially in light of the fact that AT&T clearly has had the technical, network, and OSS capacity since 2005 to meet the terms of this agreement with Cox just a few hundred miles away in Kansas.* See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act, FCC Docket No. 96-98, First Report & Order, Order No. 96-325, paras. 198 et seq. for the FCC's definition of "technical feasibility." In this regard, it is worth noting that, among the sections accepted in its entirety by CoreTel, is the OSS Section, Attachment 27.

If it relies upon the second prong, AT&T must cite to specific Kentucky laws or regulatory requirements that would preclude AT&T from offering the interconnection arrangements in question in Kentucky. Here it worth remembering that: 1) AT&T has already contracted to offer these arrangements to Cox in Kansas; and 2) AT&T has agreed to port these arrangements to any other state as the *quid pro quo* for its recent mega-merger. So the question becomes, are there specific Kentucky legal or regulatory requirements that the Commission believes would preclude AT&T from providing arrangements it already provides to Cox in Kansas to CoreTel in Kentucky? CoreTel is not aware of any such Kentucky legal or regulatory *requirements* that would have such a preclusive effect.

For those changes to the Critical Attachments that AT&T still considers to be necessary, AT&T should be able to, after more than three months' time, provide such a detailed justification in its October 1, 2008 sur-reply filing. As to AT&T's proposed changes for which AT&T cannot provide such support, including all of the detail required by law and set forth out immediately above, CoreTel recommends that the Commission reject those recommended changes and retain the Critical Attachments in their initial form in the Kansas Agreement. This will allow CoreTel to move forward with an interconnection agreement and to begin competing with AT&T where it should be competing, in the marketplace.

Submitted to and filed with the Kentucky Public Service Commission this 22nd day of September, 2008.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Pursuant to 807 KAR 5:001, Section 3(7), and Kentucky Civil Rules 5.02 and 5.03, the undersigned certifies that a copy of this filing was served by first class mail, postage prepaid, upon the following attorney for AT&T Kentucky at the following address, this 22nd day of September, 2008:

Mary K. Keyer, Esq.
General Counsel, AT&T Kentucky
601 West Chestnut Street, Room 407
Louisville, Kentucky 40203



An attorney for CoreTel Kentucky, Inc.