

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE INTRASTATE)
SWITCHED ACCESS RATES OF ALL KENTUCKY) CASE NO. 2010-00398
INCUMBENT AND COMPETITIVE LOCAL)
EXCHANGE CARRIERS)

O R D E R

On September 13, 2011, tw telecom of Kentucky, llc, Level 3 Communications, LLC, US LEC of Tennessee, L.L.C. d/b/a PAETEC Business Services, and the Kentucky Cable Telecommunications Association ("KCTA") (collectively, "Movants") filed a motion to expand the procedural schedule set out in Appendix A of the Commission's March 10, 2011 Order. Specifically, the Movants sought to extend the deadline by which to file rebuttal testimony. On September 15, 2011, AT&T Communications of the South Central States, LLC, TCG of Ohio, BellSouth Long Distance Inc. d/b/a AT&T Long Distance Service, and BellSouth Telecommunications, LLC d/b/a AT&T Kentucky (collectively, "AT&T") filed a response to the joint motion to expand the procedural schedule.

In support of their motion, the Movants assert that they have not received certain non-redacted confidential material from some parties to this case, making it impractical to adequately prepare rebuttal testimony.¹ Movants also state that developments in

¹ Motion to Expand Procedural Schedule at 2.

the proceeding at the Federal Communications Commission (“FCC”)² addressing, inter alia, access charge reform, require that the Commission suspend the current procedural schedule to allow the parties to the case to amend their previously filed testimony to reflect the positions the various parties have taken in filings at the FCC.

In the alternative, the Movants assert that if the Commission denies the motion, all parties be granted an additional 21 days from the date of denial in which to file rebuttal testimony.

AT&T, in its response, argues that neither argument presented by Movants justifies indefinitely suspending the procedural schedule and that the motion for the expansion of the procedural schedule be denied. AT&T asserts that the fact that new proposals have been filed with the FCC is not a basis for requiring revised testimony because there are no guarantees that the FCC will adopt all or part of any of the proposals filed with the FCC. AT&T also states that it is unclear when or if the FCC will issue an order addressing intrastate access rates and that there is no point in waiting indefinitely until that happens.

AT&T also asserts that failing to receive confidential information in discovery is not sufficient grounds for an indefinite suspension of the procedural schedule. AT&T does not oppose a limited extension of time in which Movants may seek to obtain the confidential material, but it does oppose an indefinite extension.

The Commission previously has declined to suspend this proceeding due to pending FCC action that could alter or affect the outcome of this proceeding. In one

² *In the Matter of: A National Broadband Plan for our Future*, GN Docket No. 09-51. This proceeding is progressing simultaneously with a related action by the FCC, *In the Matter of Connect America Fund*, WC Docket No. 10-90.

manifestation or another, the FCC has had a docket open addressing intercarrier compensation since 1996, with no final resolution to date. The Commission is not inclined to wait for FCC action on intrastate access reform as there is no guarantee as to when the FCC will act in the current docket addressing intrastate access reform. If the FCC does act, the Commission will conform this proceeding accordingly and allow the parties time to respond to the FCC action. Additionally, the Commission sees no need at this time to require the parties to file anything regarding their arguments before the FCC. Until the FCC acts, the parties' positions before the FCC may be illustrative of the ongoing debate but otherwise should not constrain the case before the Commission.

Movants also request that the procedural schedule be expanded because they have not received certain non-redacted information regarding direct testimony from some of the parties and, without the non-redacted testimony, Movants cannot prepare their rebuttal testimony. Movants (except for KCTA) filed a motion on September 9, 2011 seeking that the Commission issue a protective order and compel the production of non-redacted testimony. The Commission has yet to address this motion.

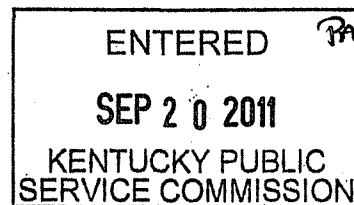
The Commission, however, sees no basis in indefinitely suspending the procedural schedule until such material is received. As AT&T noted in its response, Movants have had ample time to seek production of non-redacted direct testimony as well as responses to data requests and only now have sought relief from the Commission. If Movants had such a significant issue obtaining this information, they should have informed the Commission earlier.

The Commission, however, will grant additional time in which to file rebuttal testimony. The Commission will also address Movants' motion for a protective order in a separate Order.

Based upon the foregoing, IT IS HEREBY ORDERED that:

1. Except as provided for above, Movants' motion to expand the procedural schedule is denied.
2. Rebuttal Testimony shall be filed no later than September 30, 2011.

By the Commission



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