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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
Ballard Rural Telephone Cooperative Corp.,)
Inc., et al.,)
)
Complainants)
)
 v.)
)
BellSouth Telecommunications, Inc.)
d/b/a AT&T Kentucky,)
)
Defendant)

Case No. 2011-00199

**AT&T KENTUCKY’S OPPOSITION TO
FULL INTERVENTION BY BLUEGRASS TELEPHONE COMPANY**

Pursuant to the Commission’s Order dated September 10, 2013,¹ AT&T Kentucky² submits its Opposition to granting full intervention to Bluegrass Telephone Company, Inc. d/b/a Kentucky Telephone Company (“KTC”). As explained below, KTC seeks to raise different issues involving different facts than any of the RLEC Complainants have raised. KTC can pursue its different issues in a separate complaint of its own or with other carriers that, unlike the RLEC Complainants, actually are similarly situated to KTC. KTC, however, should not be allowed to intervene here because its participation as a party would unduly complicate and disrupt this proceeding, in violation of 807 KAR 5:0001, § 4(11).³

¹ On July 22, 2011, the Commission granted KTC’s motion for limited intervention under the Commission’s former rule, 807 KAR 5:001, § 3(8). In its September 10, 2013 Order, however, the Commission noted that its rules have changed and that 807 KAR 5:0001, § 4(11) now provides only for full intervention. The Order gave all parties the opportunity to oppose full intervention by KTC.

² BellSouth Telecommunications, LLC, d/b/a AT&T Kentucky.

³ AT&T Kentucky did not oppose KTC’s original request for limited intervention because under the prior rule permitting limited intervention (the former 807 KAR 5:001, § 3(8)), there were fundamental differences between the rights of a limited intervenor and a full intervenor. KTC’s role as a limited intervenor would have been

A. The Commission's Rules Prohibit Intervention If It Would Unduly Complicate or Disrupt the Proceedings.

The Commission should not grant KTC full intervention because KTC does not meet the standard set forth in Section 4(11). Section 4(11)(b) states that intervention is to be granted when a potential party has “a special interest that is not adequately represented” or when “intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter *without unduly complicating or disrupting the proceedings.*” (Emphasis added). KTC does not meet this test because it has *different* interests than those of the RLEC Complainants and its intervention would present *different* issues than those raised by the RLEC Complainants.⁴ By doing so, KTC would unduly complicate and disrupt the proceedings. The purpose of intervention is to allow for a new perspective or insight that may illuminate the issues raised by the actual complaint in the case, not to pursue separate, different issues unique to the proposed intervenor. KTC can pursue its different issues in a separate complaint. It does not need to join this proceeding, and it should not be allowed to do so because it would necessarily inject additional issues into a proceeding that is already complex.

B. KTC's Issues are Different Than the Issues the RLECs Have Raised.

The RLECs Complainants seek payment from AT&T Kentucky for terminating traffic that originated with non-party Halo. Each of the RLEC Complainants is directly interconnected

minimal and unobjectionable to AT&T Kentucky. As the Commission has recognized, the former rules placed “extensive restrictions on the participation of a limited intervenor.” *Joint Application of Louisville Gas & Elec. Co.*, Case No. 2004-00304, at 2 (Ken. Pub. Serv. Comm’n, Sept. 17, 2004). Specifically, KTC would have had the rights of a party “at the hearing,” but its only other right would have been to be served with Commission orders. As a limited intervenor, KTC would not have been served with testimony, exhibits, pleadings or other documents submitted by the parties and, most important for present purposes, would not have been entitled to propound discovery, present prefiled testimony, interject issues of its own, or appeal. *Id.* (“[A] limited intervenor does not have the right to issue data requests or otherwise engage in discovery, attend informal conferences, request a hearing, or file a motion or a brief.”). Thus, as a limited intervenor, KTC could not have complicated and disrupted the case in the manner that makes its participation as a full intervenor objectionable.

⁴ Given its requirement that an intervenor not unnecessarily disrupt or complicate a case, when Section 4(11)(b) speaks of a “special interest that is not adequately represented,” it necessarily means a special interest *in the issues presented in the case*, not an interest in distinctive issues that are not presented in the case.

with AT&T Kentucky and receives traffic directly from AT&T Kentucky. *See* RLEC Complaint ¶ 10. Accordingly, all of the traffic the RLEC Complainants address passed directly through AT&T Kentucky to one of the RLECs.

KTC, in contrast, is not directly interconnected to AT&T Kentucky, so none of the traffic it wants to address passed directly through AT&T Kentucky to KTC. Rather, KTC is interconnected with Windstream Kentucky East, LLC (“Windstream”), which is not a party and not one of the RLEC Complainants, and receives traffic from Windstream’s network’s. KTC Motion at 1, 3. At a minimum, any traffic KTC wants to address passed through Windstream before reaching KTC. Accordingly, any claim by KTC that AT&T Kentucky owes it access charges may require that Windstream also be brought into the case and that KTC’s contractual and network relationship with Windstream (and Windstream’s relationship with AT&T Kentucky) be examined in order to evaluate (and, if necessary, apportion) responsibility for access charges in this different type of interconnection chain. All of this would require extra discovery, testimony, and briefing, and more issues for the Commission to decide, all because of a single intervenor.⁵ That would not simplify this case, it would disrupt and complicate it. Nor would it help resolve the issues raised by the RLEC Complainants.

Additionally, the RLEC Complainants cite to and may rely upon the Kentucky Restructured Settlement Plan (“KRSP”) to support their claims against AT&T Kentucky. *See* RLEC Complaint ¶¶ 14-16. KTC, however, “is not a party to the KRSP and is not governed by it.” KTC Motion at 2. KTC therefore would add nothing to analysis of the KRSP as it affects the issues actually raised by the RLECs. Similarly, KTC appears to have its own separate tariff,

⁵ If, as a result of KTC being granted full intervention, Windstream were to be made a party to this action, counsel for AT&T Kentucky (who also represents Windstream in certain matters) would be required to withdraw as counsel for AT&T Kentucky to avoid a conflict of interest. That could result in either AT&T Kentucky or Windstream or both moving the Commission to delay this proceeding to give them time to obtain new Kentucky local regulatory counsel.

which is different than the RLEC tariffs. Thus, to the extent the RLECs' claim relies on tariff provisions, KTC may present new and different issues, not illuminate the issues actually raised by the RLECs.

Finally, KTC's primary concern appears to be how AT&T Kentucky has routed traffic ultimately destined for a KTC end-user, for it claims that such traffic "should be terminated to KTC over switched access arrangements or through an interexchange carrier" and that AT&T Kentucky is "sending traffic to the wrong carrier, in this case, Windstream." KTC Motion at 2, 3 n.1. In contrast, the RLEC Complainants do not raise any dispute or concern about the manner in which AT&T Kentucky routes traffic to them, and they make no claim that AT&T Kentucky is sending traffic to the "wrong" intermediate carrier and should have to re-route it (because again, unlike KTC, the RLECs are directly interconnected to AT&T Kentucky and there is no "intermediate carrier" between them). This shows that KTC seeks to raise new and different issues arising from the different network arrangement through which it receives traffic. Addressing such routing issues would unduly disrupt and complicate this case without helping the Commission resolve the issues raised by the RLEC Complainants, which are limited to questions of compensation.⁶

For these reasons, KTC should be not be allowed to intervene under 807 KAR 5:001, § 4(11). This will avoid unduly disrupting the case and will not harm KTC. Even without intervening, KTC can monitor this case, view the Commission's website (*see* Motion at 3), attend and view public hearings, and file written comments that will become part of the case record (807 KAR 5:001, § 4(11)(d)). *See Application of Big Rivers Electric Corporation for an*

⁶ As noted above, KTC's network arrangement makes its situation unlike the RLEC Complainants here. Its situation appears to more closely resemble that of a carrier like Cumberland Cellular (Duo County Telecom), which receives traffic from AT&T Kentucky through another intermediary carrier and which is pursuing its own complaint separate from the RLECs (including its own RLEC affiliate, Duo County Telephone) in Case No. 2013-00168.

Adjustment of Rates, Case No. 2012-00535 (Ken. Pub. Serv. Comm'n, April 15, 2013) (finding that the ability to “monitor the proceedings via the Commission’s website,” “file comments as frequently as it chooses” and have them made part of the record, and “attend and present public comment at the public hearing” gave the petitioner “ample opportunity to participate in this proceeding even though it is not granted intervenor status.”).

Respectfully submitted,

AT&T KENTUCKY

By: 

One of Its Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served by United States First Class Mail, postage prepaid, upon:

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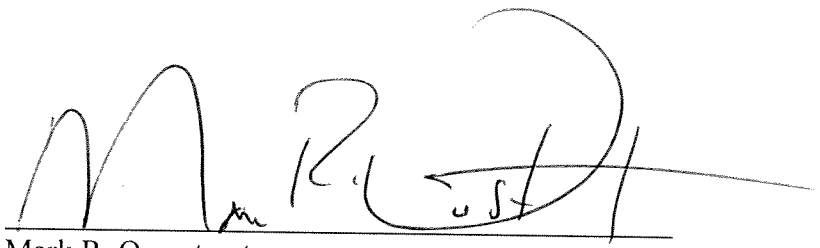
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On this the 19th day of September, 2013.

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', written over a horizontal line.

Mark R. Overstreet