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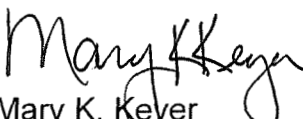
Mr. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: South Central Telcom LLC, Complainant, v. BellSouth
Telecommunications, Inc., Defendant
KPSC 2006-00448

Dear Mr. Derouen:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of AT&T Kentucky's Post-Hearing Brief.

Sincerely,


Mary K. Keyer
General Counsel/Kentucky

Enclosures

cc: Party of Record

734247

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SOUTH CENTRAL TELCOM LLC)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2006-00448
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
DEFENDANT)	

AT&T KENTUCKY'S POST-HEARING BRIEF

Defendant BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky") submits its post-hearing brief in the above-referenced complaint brought by South Central Telcom LLC ("South Central Telcom"). For the reasons set forth herein, the Kentucky Public Service Commission ("Commission") should issue an order that dismisses South Central Telcom's complaint and that requires the parties to negotiate in good faith and enter into an agreement that will define the various traffic types addressed in this case and associated compensation (if any) for such traffic. The Commission should also hold that South Central Telcom is not entitled to any compensation from AT&T Kentucky for third-party originated or transit traffic; rather, South Central Telcom should seek to collect compensation from the providers originating such traffic.

FACTUAL BACKGROUND

This case involves two local exchange carriers – South Central Telcom, a competitive local exchange carrier (“CLEC”), and AT&T Kentucky, an incumbent local exchange carrier (“ILEC”).¹ AT&T Kentucky routes calls to customers of South Central Telcom that have been originated either by customers of AT&T Kentucky (“AT&T Kentucky-originated traffic”) or by customers of carriers *other than* AT&T Kentucky (“third party-originated traffic” or “transit traffic”).² The parties agree that AT&T Kentucky has an obligation according to this Commission to act as a transit traffic provider.³ (Tr. at 32)

AT&T Kentucky routes these calls in accordance with designations placed by South Central Telcom in the Local Exchange Routing Guide (“LERG”), the nationally recognized source in the industry for the routing of voice traffic. (Tr. at 87) South Central Telcom has directed in the LERG that traffic destined for its customers be routed through the switch of its affiliate, South Central Rural Cooperative Corporation, Inc. (“South Central Rural”), an incumbent independent telephone company (“ICO”). Exhibit PHP-2 to the Direct Testimony of Patricia Pellerin illustrates the routing of traffic destined for South Central Telcom customers. Because South Central Telcom does not have a switch of its own (Tr. at 88-89), it utilizes the switch of South Central Rural, its

¹ Contrary to what South Central Telcom would have the Commission believe, AT&T Kentucky is *not* a long distance provider or interexchange carrier (“IXC”), *has never been* an IXC, and is not “certified as an IXC,” as acknowledged by South Central Telcom’s lawyer (Tr. at 79), so could not operate as an IXC.

² While traffic that is originated by customers of wireless carriers (“cellular mobile radio service traffic” or “CMRS traffic”) would technically be considered third party-originated or transit traffic, it is not at issue in this case so is not included in this discussion since South Central Telcom withholds this traffic from what it claims AT&T Kentucky owes South Central Telcom. South Central Telcom concedes that this traffic is not subject to its access tariff. (Tr. at 28)

³ Case No. 2004-00044, Order dated September 26, 2005 at page 15: “The Commission has previously required third party transiting by the incumbent based on efficient network use. The Commission will continue to require [AT&T Kentucky] to transit such traffic.”

affiliate ICO. While South Central Rural has an agreement with AT&T Kentucky that governs the exchange of traffic between those entities, South Central Telcom does not have, and refuses to enter into, such an agreement with AT&T Kentucky for the exchange of traffic. (Tr. at 19-21)

At issue in this case is how and under what terms and conditions South Central Telcom gets compensated, if at all, from AT&T Kentucky for these two types of traffic that terminate to South Central Telcom's customers via South Central Rural's switch. South Central Telcom claims that AT&T Kentucky should compensate it for all such traffic regardless of which type of traffic it is and without any type of agreement between the parties. (Tr. at 43-47) South Central Telcom argues that its switched access tariff, applicable to IXCs, applies to AT&T Kentucky. (Tr. at 22) AT&T Kentucky asserts that it is only obligated to compensate South Central Telcom for AT&T Kentucky-originated traffic and that the rates, terms and conditions for such compensation must be set forth in an agreement between the parties. (Tr. at 55) The policy that the originating party pays for its traffic is endorsed by both this Commission and the FCC. (Tr. at 57)

PROCEDURAL HISTORY

In October 2006, South Central Telcom filed a complaint wherein it sought a Commission order requiring AT&T Kentucky (then known as BellSouth) to pay South Central Telcom's tariffed switched access charges for all calls (or traffic) that AT&T Kentucky delivers to South Central Telcom's affiliate, South Central Rural.

In November 2006, AT&T Kentucky answered the complaint and moved to dismiss the same. In its answer and motion to dismiss, AT&T Kentucky denied that it should pay tariffed switched access charges for traffic delivered to South Central

Telcom; denied any obligation to compensate South Central Telcom for calls that were originated by customers of third-party carriers; and asserted that the parties needed to execute an interconnection agreement entered into pursuant to sections 251 and 252 of the federal Telecommunications Act of 1996 (“the Act”) to address the traffic at issue in the case. In addition to the lack of an agreement between the parties, AT&T Kentucky further noted that South Central Telcom had refused to negotiate an interconnection agreement in violation of the Act. In May 2007, South Central Telcom moved for summary judgment.

In April 2008, the Commission denied both motions. Thereafter, the parties engaged in extensive discovery. An evidentiary hearing was held on February 25, 2009.

HEARING TESTIMONY

At the hearing, South Central Telcom presented the testimony of Max Phipps, its General Manager. Mr. Phipps testified that South Central Telcom has a filed and approved tariff for the termination of switched access traffic and that AT&T Kentucky should pay tariffed switched access rates for all traffic (with the exception of CMRS traffic) that AT&T Kentucky delivers to South Central Telcom, regardless of the type of traffic or scenario in which the traffic is delivered by AT&T Kentucky. (Tr. at 35) Mr. Phipps acknowledged that “AT&T Kentucky acts as a transit traffic provider when a call originates on a third-party carrier’s network, passes through AT&T network, and terminates with a South Central Telcom end user.” (Tr. at 27) He also testified that he was “aware that this Commission has ruled that AT&T has an obligation to act as a transit traffic provider.” (Tr. at 32) Finally, Mr. Phipps testified that there was no

“different method by which South Central [Telcom] would be willing to accept this traffic.” (Tr. at 48)

Yet, Mr. Phipps stated there was no need for the parties to enter into any agreement because of his company’s access tariff, but could not point to any specific provision in the tariff to support his company’s position. (Tr. at 22) While Mr. Phipps testified that AT&T Kentucky’s proposed agreement imposed additional network deployment requirements on South Central Telcom, he could not identify any portion of the proposed agreement that imposed such requirements (Tr. at 20) and made clear that South Central Telcom would not enter into an agreement with AT&T Kentucky, even if the agreement did not impose such requirements, unless ordered to do so. (Tr. at 20-21)

AT&T Kentucky presented the testimony of Patricia Pellerin, an Associate Director – Wholesale Regulatory Support with over 35 years experience in the telecommunications industry. Ms. Pellerin has testified before numerous state regulatory bodies, including the commissions of Florida, Alabama, Texas, Michigan, and Illinois. Among other things, Ms. Pellerin summarized AT&T Kentucky’s efforts to negotiate an agreement with South Central Telcom; explained why South Central Telcom’s switched access tariff does not apply to the traffic AT&T Kentucky delivers to South Central Telcom’s customers via South Central Rural’s switch; and described how the parties interconnect to exchange voice traffic and the types and relative amounts of traffic AT&T Kentucky sends to South Central Telcom end users.

Additionally, Ms. Pellerin explained what transit traffic is and why AT&T Kentucky does not owe South Central Telcom compensation for delivering transit traffic. See e.g. Tr. at 54-60.

SUMMARY OF THE DISPUTE

South Central Telcom has billed and continues to bill AT&T Kentucky pursuant to South Central Telcom's switched access tariff as if AT&T Kentucky were an IXC. AT&T Kentucky, which is an ILEC, has disputed that the traffic involved in this case is subject to the tariff.

There are two primary categories of traffic at issue – AT&T Kentucky-originated traffic, which constitutes approximately 2% of the total traffic at issue in this case,⁴ and transit traffic, which constitutes 98% of the total traffic at issue, of which a large majority is CMRS traffic. (Tr. at 52, Pellerin Direct Testimony at 11, fn. 5)

AT&T Kentucky has acknowledged it owes South Central Telcom compensation for termination of AT&T Kentucky-originated calls and will pay the agreed-upon compensation once the parties execute an appropriate agreement pursuant to which such payments can be made. (Tr. at 55) AT&T Kentucky disputes, however, that South Central Telcom's switched access tariff applies to such traffic for the reasons stated in Section III below. Nevertheless, AT&T Kentucky has agreed to pay South Central Telcom for AT&T Kentucky-originated traffic at rates equivalent to those set forth in South Central Telcom's switched access tariffs. (Pellerin Rebuttal Testimony at 6-7) AT&T Kentucky is not trying to avoid its payment obligation but feels strongly that the parties need an agreement to set forth definitions, terms, and conditions for the various types of traffic involved so there can be no question as to how to define certain types of

⁴ This 2% includes CLEC (Resale and Wholesale Local Platform ("WLP")) originated calls that use switching provided by AT&T Kentucky rather than their own switch. (Pellerin Direct Testimony at 11, fn. 5)

traffic and the appropriate compensation, if any, for the traffic. The need for such an agreement was reinforced in the hearing when there were several exchanges with South Central Telcom's witness about the meaning of "toll traffic," "third party traffic" and "transit traffic" and potential confusion over some of these terms. (Tr. at 25) ("toll traffic and transit traffic are one and the same"); (Tr. at 26-27) ("Transit traffic typically involves traffic exchanged by two carriers subtending the same tandem." Mr. Phipps was unable to provide an example of transit traffic based on his definition); (Tr. at 40-42) (South Central Telcom's counsel expressed potential confusion by South Central Telcom's witness regarding South Central Telcom's position "as to what constitutes transit traffic, as AT&T appears to use it in their testimony, and third-party traffic, as we use it in our testimony")

For third party-originated traffic or transit traffic (*i.e.*, calls delivered to South Central Telcom for which an AT&T Kentucky customer is neither the calling party nor the party receiving the call), AT&T Kentucky asserts that it does not owe South Central Telcom any compensation, because AT&T Kentucky is only the transiting carrier, not the originating carrier. The "calling party's network pays" is well established policy based on principles of cost causation that has been expressly recognized by the Kentucky Commission⁵ and is consistent with both the Federal Communications Commission's ("FCC") rules (Rule 51.703(b)) and two federal appellate court rulings.⁶

AT&T Kentucky's position on each of the two issues is: (1) for AT&T Kentucky-originated traffic (approximately 2% of the traffic between the parties), AT&T Kentucky will pay compensation once the parties execute an agreement pursuant to which such payments can be made; and (2) for the remainder of the traffic, AT&T Kentucky is not

⁵ *In the Matter of: The Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc., Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Case No. 2000-404, (March 14, 2001) at 3 and 8.

⁶ *Atlas Telephone v. Oklahoma Corporation Commission*, 400 F.3d 1256 (10th Cir. 2005) and *Mountain Communications v. FCC*, 355 F.3d 644 (D.C. Cir. 2004).

responsible for payment of any charges to South Central Telcom because AT&T Kentucky is only the transit provider – South Central Telcom needs to collect its terminating compensation from the providers who originate the calls, just as it does with CMRS traffic, and not from AT&T Kentucky. As previously noted, South Central Telcom simply takes the position that all traffic delivered by AT&T Kentucky (with the exception of CMRS traffic) is subject to South Central Telcom’s switched access tariff.

ARGUMENT

- I. The Commission should order the parties to enter into an appropriate agreement to resolve the current dispute and eliminate on a going forward basis any dispute or confusion over what compensation (if any) is owed for the traffic that AT&T Kentucky delivers to South Central Telcom end users.**

South Central Telcom is a CLEC. The Act created a framework whereby CLECs obtained the ability to interconnect and exchange traffic with ILECs and other carriers. See Sections 251 and 252 of the Act. The FCC has expressly held that interconnection agreements, and not tariffs, are the appropriate mechanism for the establishment of reciprocal compensation obligations between carriers.⁷ Further, until the carriers

⁷ In the Matter of Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, CC Docket No. 01-92, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855, ¶¶ 14, 19-21 (2005) (FCC amended its rules to prohibit local exchange carriers from imposing compensation obligations for non-access traffic pursuant to tariff, stating that “precedent suggests that the Commission intended for compensation arrangements to be negotiated agreements” and finding that “negotiated agreements between carriers are more consistent with the pro-competitive process and policies reflected in the 1996 Act.”)

negotiate such an agreement, the definition of what constitutes local traffic and toll traffic as between those parties has not been established.⁸

Under the process contemplated by the Act, a CLEC would negotiate with the ILEC for an interconnection agreement that would specifically cover such items as the terms, conditions and rates for the exchange of traffic. Further, in a typical situation, an agreement would be reached as a prerequisite to establishing the actual physical connection between the two companies that would be utilized to exchange traffic, or at least to determine the type of interconnection (direct or indirect) that the parties would utilize. Moreover, while section 251 provides the framework for interconnection agreements between CLECs and ILECs, agreements to exchange traffic are not unique to the business relationship between local exchange service providers. AT&T Kentucky and every other ILEC with which AT&T Kentucky exchanges traffic have in place agreements to govern the terms of the exchange of traffic between them. Similarly, AT&T Kentucky and every CLEC that AT&T Kentucky compensates for the exchange of traffic also have in place agreements to govern the terms of the exchange of the traffic between them.

Further, CLECs, which were created by the Act, also have physical connections that have been established to exchange traffic pursuant to the terms of these agreements. Thus, what AT&T Kentucky has requested that South Central Telcom do - to negotiate an agreement under which the terms of traffic exchange would be defined -

⁸ The FCC has, however, definitively established that traffic to and from wireless service providers that originates and terminates within the same Major Trading Area ("MTA") is local traffic subject to the reciprocal compensation obligations of the Act. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, CC Docket No. 95-185, First Report and Order, 11 FCC Rcd 15499, 16014, ¶ 1036 (1996) ("*FCC First Report and Order*").

is no different than what AT&T Kentucky has requested from any other local carrier, either incumbent or competitive.

Because of the unique relationship between South Central Telcom and South Central Rural (*i.e.*, South Central Telcom relies on South Central Rural's switch) there is no direct interconnection between AT&T Kentucky and South Central Telcom. (See Exhibit PHP-2 to Ms. Pellerin's direct testimony and Transcript at 89). If there were direct interconnection then there would be no question that South Central Telcom would have an obligation to enter into an interconnection agreement with AT&T Kentucky. Notwithstanding South Central Telcom's arguments to the contrary, Section 251 of the Act sets forth the mechanism by which ILECs (like AT&T Kentucky) and CLECs such as South Central Telcom exchange traffic. Although this situation is unique because South Central Telcom is not doing business in AT&T Kentucky's service territory, the service territory of the CLEC should not dictate a different set of rules. ILECs and CLECs should all play by the same set of rules and those rules are set forth in Section 251.

As previously noted, South Central Telcom uses the switch of its affiliate company, South Central Rural. South Central Telcom has simply used the fact that it is affiliated with an ICO that already has an interconnection facility and agreement with AT&T Kentucky to avoid the requirements of the Act. The result is that unlike most other CLECs, South Central Telcom uses the existing ICO-to-AT&T Kentucky relationship and facilities to avoid its own obligations to negotiate terms and conditions for the exchange of traffic, while it reaps the benefits of allowing its customers to receive AT&T Kentucky traffic, as well as third party transit traffic. This is an advantage that no

other CLEC enjoys unless it is a CLEC that is affiliated with an independent local exchange carrier.

The Act clearly contemplates that ILECs and CLECs will enter into interconnection agreements that control the business relationship between them. Specifically, section 251(a)(1) states that each telecommunications carrier has the duty to “interconnect directly or indirectly with the facilities of other telecommunications carriers.” Further, each local exchange carrier has “the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.” Section 251(b)(5). Each ILEC has the additional duty to negotiate in good faith to reach agreement with each requesting telecommunications carrier and to enter into an interconnection agreement that includes, among other things, arrangements “for the transmission and routing of telephone exchange service and *exchange access*.” (Section 251(c)(2)(a)) (emphasis added).

There is nothing in the language of the Act to suggest that parties should enter into interconnection agreements pursuant to the Act as a means to control the provision of only *some* transport, routing, traffic termination or access provided by the parties. Instead, the Act contemplates that parties will negotiate and execute interconnection agreements that govern *all* aspects of interconnection.

South Central Telcom claims that the Act applies, and an interconnection agreement is required, *if* the traffic in question includes exchange service *and* exchange access, but that the Act does not apply if the traffic includes one or the other, *but not both*. See South Central Telcom’s Summary Judgment Motion at 9. South Central Telcom fails to explain, however, what could possibly be the point of a provision in the

Act that an interconnection agreement is *not* required when one type of traffic is exchanged, *or* when a second type is exchanged, but that an agreement *is* required if both types of traffic are exchanged. If Congress had intended this peculiar result, then surely the Act would have stated this intention explicitly. Because it does not, and because such a distinction in the way traffic is treated would serve no purpose whatsoever, South Central Telcom's attempt to twist the language of the Act to its own ends must be rejected.

While AT&T Kentucky believes that all ILECs and CLECs should negotiate agreements pursuant to section 251, and has previously proposed to South Central Telcom that the parties negotiate an interconnection agreement pursuant to section 251 of the Act, in an effort to resolve this matter, AT&T Kentucky witness Ms. Pellerin testified that AT&T Kentucky remains willing to negotiate a simple traffic exchange agreement apart from the requirements of section 251 if that will resolve the parties' differences. From a practical perspective, Ms. Pellerin testified that an agreement would allow the parties to define the traffic involved in this case and would set forth the compensation (if any) owed for the termination of such traffic. (Tr. at 91-92)

The hearing testimony made clear that absent a Commission order, South Central Telcom will not enter into an agreement with AT&T Kentucky to govern the traffic in dispute. (Tr. at 21) Contrary to its claim that AT&T Kentucky was using its so-called monopoly power to extract more favorable rates from South Central Telcom, South Central Telcom's witness had no basis for such a statement and conceded that South Central Telcom has refused to enter into an agreement that contains the same rates as contained in South Central Telcom's switched access tariff. (Tr. at 19-20)

Regarding South Central Telcom's claim that AT&T Kentucky's proposed agreement (Exhibit PHP-1 to Pellerin Direct Testimony) imposed additional network deployment requirements on South Central Telcom, Mr. Phipps admitted that he could not identify any portion of the agreement that did so. (Tr. at 21) In sum, the hearing testimony demonstrated that South Central Telcom has no reasonable basis for refusing to enter into an agreement with AT&T Kentucky.

II. There is a unique interconnection arrangement between the parties.

As previously noted (see Exhibit PHP-2 to Pellerin Direct Testimony), AT&T Kentucky is not directly interconnected with South Central Telcom. That is, there is no direct physical connection between AT&T Kentucky's network and South Central Telcom's network. Instead, AT&T Kentucky connects to South Central Telcom indirectly via its affiliate South Central Rural, an ICO.

Ms. Pellerin presented unrefuted testimony that AT&T Kentucky routes calls to South Central Rural based on the routing designations set forth by South Central Telcom in the LERG. (Tr. at 87) The LERG directs AT&T Kentucky to route South Central Telcom's telephone numbers to the South Central Rural switch.

South Central Telcom's position that its switched access tariff applies to all traffic delivered by AT&T Kentucky to it is based on the fact that all the traffic traverses the same facilities. (Tr. at 46-47) It is South Central Telcom, however, that directs how and over what facilities the traffic is routed. (Tr. at 87) Moreover, Mr. Phipps testified, when questioned by Commission Staff Attorney Pinney, that he was aware of no scenario in which he could envision AT&T Kentucky could route the traffic differently and that there is "no different method by which South Central would be willing to accept this traffic." (Tr. at 48)

AT&T Kentucky routes the following five types of traffic to South Central Rural for delivery to South Central Telcom's end users based on the LERG routing designations for South Central Telcom's telephone numbers:

1. CMRS (*i.e.*, cellular wireless) originated transit traffic;
2. Facility-based CLEC originated transit traffic;
3. Independent Telephone Company (ICO) originated transit traffic;
4. AT&T Kentucky originated traffic;
5. CLEC Resale and Wholesale Local Platform ("WLP") originated traffic from CLECs that use switching provided by AT&T Kentucky rather than their own switch.

Regarding transit traffic, Ms. Pellerin testified that transit traffic is traffic originated by a third party carrier (wireless, CLEC or ICO) on the third party's network, transited through AT&T Kentucky's network, and delivered to another terminating carrier. In this case the traffic is delivered (via South Central Rural) to South Central Telcom for completion. AT&T Kentucky's end users do not originate these transit calls. While Mr. Phipps could not explain his definition of transit traffic (Tr. at 26-27), he agreed with AT&T Kentucky's definition of transit traffic and acknowledged that AT&T Kentucky acts as a transit traffic provider in this scenario. (Tr. at 27)

Ms. Pellerin further provided undisputed testimony that the vast majority (almost 98%) of the traffic AT&T Kentucky delivers to South Central Rural for completion to South Central Telcom is transit traffic, much of which is CMRS transit traffic, *i.e.*, a mobile to landline call originated by a CMRS subscriber and terminated to a South Central Telcom end user. AT&T Kentucky sends South Central Telcom information *every month* delineating between AT&T Kentucky originated-traffic and transit traffic. (Pellerin Direct Testimony at 23). Presumably it is based on these records that South

Central Telcom excludes CMRS-originated traffic from amounts it bills AT&T Kentucky.⁹ Mr. Phipps testified that South Central Telcom would continue to do so in the future. (Tr. at 28) Despite such a commitment, South Central Telcom refuses to memorialize its commitment in an agreement (Tr. at 28) and is thus free to change its current practice regarding CMRS-originated traffic. This is yet another reason why the Commission should order the parties to enter into an appropriate agreement.

Ms. Pellerin testified that approximately 2% of the traffic involved in this dispute is originated by AT&T Kentucky's end user customers.¹⁰ Regarding such traffic, AT&T Kentucky agrees that (as the originating carrier) it is obligated to pay intercarrier compensation to South Central Telcom (as the terminating carrier) for the 2% of the traffic exchanged between the parties that is AT&T Kentucky-originated traffic and is willing to do so pursuant to an agreement. The remainder of the traffic at issue is either ICO-originated or CLEC-originated traffic that transits AT&T Kentucky's network en route to South Central Telcom's end users. Because AT&T Kentucky does not originate this traffic, but rather acts only as the transit provider between the ICO or CLEC and South Central Telcom, AT&T Kentucky has no intercarrier compensation obligations with respect to this traffic.¹¹

⁹ These records would also allow South Central Telcom to differentiate third party originated traffic for purposes of billing the originating carrier. (Tr. at 85-86)

¹⁰ This amount includes calls originated from CLEC resale and WLP end users served by AT&T Kentucky's switch. Whether AT&T Kentucky should pay for the termination of such calls is a matter AT&T Kentucky is willing to discuss during good faith negotiations of an appropriate agreement.

¹¹ Mr. Phipps' hearing testimony demonstrated that South Central Telcom's assertion that AT&T Kentucky somehow treats ICO-originated traffic differently is incorrect. Specifically, Mr. Phipps acknowledged that AT&T Kentucky's position in this matter is completely consistent with BellSouth's position in the BellSouth/MCI (Verizon Business) arbitration proceeding (Tr. at 30) and he conceded that in other agreements AT&T Kentucky has agreed to pay access charges only when AT&T Kentucky receives toll revenue from the originating carrier. (Tr. at 31)

III. South Central Telcom's tariff is not applicable.

Ms. Pellerin's testimony plainly and extensively established that South Central Telcom's switched access tariff¹² does not apply to AT&T Kentucky. For example, Section 2.6 of South Central Telcom's access tariff defines "Customer" as follows:

The term "Customer(s)" denotes any individual, partnership, association, joint-stock company, trust, corporation, or governmental entity or other entity which subscribes to the services offered under this tariff, including both Interexchange Carriers (ICs) and End Users.

Of course, AT&T Kentucky is not an interexchange carrier, it is not an end user, and, most importantly, AT&T Kentucky has not subscribed to the services offered in South Central Telcom's tariff.

Terms and conditions for switched access service are located in Section 6 of South Central Telcom's tariff. Specifically, Section 6.1 of the tariff describes switched access service as:

a two-point communications path between a customer designated premises and an end user's premises. It provides for the use of common terminating, switching, and trunking facilities and for the use of common subscriber plant of the Telephone Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer designated premises, to an end user's premises in the LATA where it is provided. [...]

Rates and charges for Switched Access Service depend generally on the specific Feature Group *ordered* by the customer ... (emphasis added)

In Section 6.1.1, the tariff describes the available switched access service arrangements. Relevant excerpts from that tariff section are as follows:

Switched Access Service is provided in four different Feature Group arrangements which are service categories of standard and optional features. [...]

¹² With the exception of certain rates and charges, South Central Telcom adopted the intrastate tariff of Duo County Telephone Cooperative Corp., Inc. ("Duo County"). Any references to South Central Telcom's access tariff, therefore, may be found on the Commission's website under Duo County's tariff link.

The provision of each Feature Group requires Local Transport facilities, including an Entrance Facility where required, and the appropriate End Office functions. [...]

Section 5.1 of South Central Telcom's tariff describes the general process to order switched access service.

An Access Order is an order to provide the customer with Switched Access ...

A customer may order any number of services of the same type and between the same premises on a single Access Order.

Section 5.1 also indicates the specific information required on an Access Order. In addition to the particular switched access service ordered (*e.g.*, Feature Group D), an Access Order also requires customer contact and billing information. Additional subsections set forth terms and conditions regarding service installation (Section 5.1.1), expedited orders (Section 5.1.2) and selection of facilities for Access Orders (Section 5.1.3).

Section 5.2.1 provides specific information regarding ordering of switched access service. This section includes a description of the available switched access services, for example Feature Groups A, B and D. Of note, switched access service is described in terms of a *physical interconnection* between the IXC's network and South Central Telcom's network. Again, AT&T Kentucky is not an IXC, has not ordered or subscribed to South Central Telcom's switched access service, and does not have a physical interconnection arrangement with South Central Telcom.

In sum, Ms. Pellerin's testimony makes clear that South Central Telcom's access tariff is not applicable to AT&T Kentucky, an ILEC. AT&T Kentucky has not ordered and South Central Telcom has not provisioned switched access service; therefore, AT&T

Kentucky is not a “Customer” of South Central Telcom’s access tariff. In contrast, the South Central Telcom witness failed to identify any portion of his company’s tariff that allegedly applies to AT&T Kentucky. (Tr. at 22)

South Central Telcom is likely to assert again that *In the Matter of Brandenburg Telecom, LLC v. AT&T Communications of South Central States, Inc.*, Case No. 2002-00383, 2003 Ky. PUC Lexis 351 (May 1, 2003) supports its position. In *Brandenburg*, AT&T Communications, an IXC (not AT&T Kentucky, which is an ILEC), was providing long distance services to customers in Kentucky, “including some end user customers who receive local exchange telephone service from Brandenburg.” (*Brandenburg Order*, p. 2). Thus, AT&T Communications was unquestionably functioning as an IXC, not as a LEC with which Brandenburg was exchanging traffic. Further, the issue in that case was whether an IXC can be made to purchase service from a tariff or whether the local carrier must accede to the IXC’s request for a contract service arrangement that would contain additional terms not found in the LEC’s tariff. That situation is readily distinguishable from the current one, in which South Central Telcom obtained indirect interconnection with AT&T Kentucky through South Central Telcom’s ICO affiliate and is now attempting to unilaterally impose access charges on AT&T Kentucky under a facially inapplicable tariff.

IV. South Central Telcom should seek compensation for transit traffic from the carriers whose customers make the calls that are ultimately delivered to South Central Telcom’s customers.

The parties agree that transit traffic originates on one carrier’s network, passes through AT&T Kentucky’s network, and terminates with a South Central Telcom end user – an AT&T Kentucky end user is neither the calling party nor the called party. (Tr.

at 27) The existence of an agreement (or lack thereof) between South Central Telcom and AT&T Kentucky is irrelevant when determining whether traffic is transit traffic.

AT&T Kentucky acts as a transit provider for two reasons. First, AT&T Kentucky understands the importance to consumers, no matter whose customers they happen to be, of having calls delivered appropriately. Thus, absent AT&T Kentucky performing the transit function on behalf of the originating carriers, the calls would not be delivered to the end users. Second, the Commission has held that AT&T Kentucky is obligated to deliver transit traffic it receives that is destined for another provider.¹³ And while AT&T Kentucky does not agree that it has such an obligation, it has no reason to believe that the Commission would find differently in the case of transit traffic destined for South Central Telcom's end users. Indeed, Mr. Phipps conceded that AT&T Kentucky must act as a transit provider (Tr. at 33) Accordingly, South Central Telcom's argument that AT&T Kentucky volunteered to act as a transit provider is inaccurate, and its suggestion that AT&T Kentucky could cease acting as a transit provider is simply not an option that is available to AT&T Kentucky.

It is a common industry understanding that the "cost causer pays." In the case of the transit traffic involved in this matter, the originating carrier should pay the costs of delivering a call from its end user to a South Central Telcom end user. This practice makes sense because it is the originating party that is collecting the revenue from its end user for the service of call delivery. The end user pays the originating carrier to deliver a call; the originating carrier, in turn, pays the other carrier(s) that participates in delivering that call – in the case of transit traffic, that is the transit provider and the terminating carrier. Because AT&T Kentucky is not collecting any revenue from an end user for this traffic, and because AT&T Kentucky did not originate these calls and has

¹³ See fn. 3, *supra*.

no relationship with the originating caller, it is unreasonable to charge AT&T Kentucky for call completion for transit traffic (from a tariff or otherwise).

Ms. Pellerin testified that AT&T Kentucky provides industry standard Exchange Message Interface ("EMI") usage records to South Central Telcom. These records can be used by South Central Telcom for billing the originating carrier (*i.e.*, carriers other than AT&T Kentucky). They cannot, however, be used by AT&T Kentucky to obtain payment from the originating carriers. (Tr. at 94-96) This arrangement will not work as the originating carrier expects to see detailed invoices from the terminating carrier as proof that AT&T Kentucky paid for the originating carrier's traffic. (Tr. at 86) South Central Telcom bills AT&T Kentucky for an aggregate total of minutes with no detail records supporting such billing. (Tr. at 86) Without a detailed bill, there is no way AT&T Kentucky can prove that it paid South Central Telcom for the exact amount of minutes originated by that carrier. Additionally, AT&T Kentucky should not become entwined in the compensation for traffic that is exchanged by two other parties. South Central Telcom should directly bill the party originating the traffic that terminates to South Central Telcom customers. Alternatively, the originating and terminating carrier could agree on another method of measuring and compensating for the traffic.

South Central Telcom makes the unsupported declaration that all traffic that AT&T Kentucky delivers to South Central Telcom is "toll" traffic. This is inaccurate. Transit traffic is not toll traffic. Whether or not a call is treated as "toll" or "local" is a matter that should be agreed upon by the originating and terminating carriers. To the transit provider (AT&T Kentucky), the designation of a call as local or toll as negotiated between the originating and terminating carrier is irrelevant. In a toll call situation, the IXC has an end user customer that it can bill for the call. Thus, the IXC has a revenue source from which it can pay the terminating carrier. A transit provider (such as AT&T

Kentucky) has no end user customer involved and therefore no revenue source from which to pay intercarrier compensation payments. The only revenue the transit provider (*i.e.*, AT&T Kentucky) receives is from the originating carrier (*i.e.*, carriers other than AT&T Kentucky) for recovery of transit switching and transport costs incurred for the use of the transiting carrier's network, not for call termination.

In short, South Central Telcom's claim that it must bill all traffic from AT&T Kentucky as switched access traffic lacks merit. The hearing testimony established that South Central Telcom knows that it is receiving third-party originated traffic (*i.e.*, transit traffic) from AT&T Kentucky. Further, South Central Telcom is the one that directs the way carriers route South Central Telcom's traffic through its input into the LERG. Moreover, South Central Telcom claims that it removes CMRS-originated traffic from its switched access bills indicating it could do the same for other third-party originated traffic. Finally, every month AT&T Kentucky sends South Central Telcom industry standard EMI records that separately identify the amount and source of the transit traffic that AT&T Kentucky delivers.

VI. Summary and Conclusion.

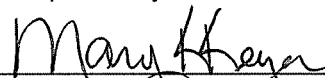
South Central Telcom has improperly billed tariffed switched access charges to AT&T Kentucky, even though AT&T Kentucky has not subscribed to South Central Telcom's tariffed service; AT&T Kentucky has disputed and not paid these access bills. The vast majority of traffic at issue is transit traffic, originated on third party carriers' networks, for which AT&T Kentucky has no compensation obligation. The Commission has ruled that AT&T Kentucky has an obligation to provide transit service in Kentucky. By acting as a transit provider, AT&T Kentucky has acted in the best interest of Kentucky consumers. It is hardly reasonable to fault AT&T Kentucky for making sure

that consumers' calls – even for consumers that are not AT&T Kentucky's customers – get to their intended destinations.

South Central Telcom admits that it backs out CMRS-originated traffic from the switched access bills it sends to AT&T Kentucky. In addition, AT&T Kentucky provides South Central Telcom with industry standard EMI records indicating the volume and source of transit traffic, which enables South Central Telcom to 1) back out all transit traffic from its bills to AT&T Kentucky; and 2) bill the originating carrier for call termination. Accordingly, South Central Telcom has the information necessary to bill originating carriers (rather than AT&T Kentucky).

It is respectfully submitted that the Commission should resolve this case in the following way: (1) for AT&T Kentucky-originated traffic, order the parties to enter into an appropriate agreement that will set forth the parameters, including rates, for the exchange of AT&T Kentucky-originated traffic; and (2) for third-party-originated traffic (*i.e.*, transit traffic) hold that South Central Telcom is not entitled to compensation from AT&T Kentucky, but rather should collect terminating compensation from the providers originating the calls.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individual by mailing a copy thereof, this 24th day of April 2009.

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