Dinsmore&Shohl LLP
ATTORNEYS

Edward T. Depp
502-540-2346
tip.depp@dinslaw.com

July 26, 2010

RECEIVED
JUL 26 2010
PUBLIC SERVICE COMMISSION

Via Hand Delivery
Hon. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40601

Re: In the Matter of: South Central Telcom LLC v. BellSouth Telecommunications, Inc., Case No. 2006-00448

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case, please find one original and eleven (11) copies of South Central Telcom LLC's Response to AT&T Kentucky's Motion for Clarification / Modification and for Extension of Time. Please file-stamp one copy, and return it to our courier.

Thank you, and if you have any questions, please call me.

Very truly yours,

DINSMORE & SHOHL LLP

Edward T. Depp

ETD/sdt
Enclosures
cc: All Parties of Record

795096_1
25122-2

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. D/B/A AT&T KENTUCKY	)	
Defendant	)	

SOUTH CENTRAL TELCOM'S RESPONSE TO AT&T KENTUCKY'S MOTION FOR CLARIFICATION / MODIFICATION AND FOR EXTENSION OF TIME

South Central Telcom LLC ("South Central"), by counsel, hereby responds to BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky's ("AT&T Kentucky") Motion for Clarification / Modification (the "Motion"). For the reasons explained more fully below, the Public Service Commission of the Commonwealth of Kentucky (the "Commission") should deny AT&T Kentucky's Motion. In support of its response, South Central states as follows.

INTRODUCTION

The Commission issued an Order in this case on June 22, 2010, finding among other things that

> If . . . the calling party is a customer of a facilities-based CLEC or other ICO within AT&T Kentucky's service area and the customer places a non-local toll or long-distance call to South Central, the call is deemed to have originated on AT&T Kentucky's network, if the calling party is not using another presubscribed IXC. In those instances, AT&T Kentucky is functioning as an IXC and should pay access charges to South Central.

(Order at 13 (emphasis in original). AT&T Kentucky requests that this entire paragraph be stricken.[1] The Commission, however, should deny AT&T Kentucky's Motion for three reasons.

First, it fails to meet the threshold standard required to justify a rehearing under KRS 278.400 as it presents "no additional evidence that could not with reasonable diligence have been offered on the former hearing." KRS 278.400. Second, though AT&T Kentucky claims that it "does not act as an IXC . . . for facilities-based CLECs' end users," its explanation for why the CLEC traffic it delivers to South Central's network should not be subject to access charges remains without merit. (AT&T Kentucky Motion at 4). Third, in spite of AT&T Kentucky's assertion to the contrary, the Commission's Order does not undermine the principle that the "calling party's network pays." South Central has never objected to any arrangements AT&T Kentucky may make to enforce this principle. AT&T Kentucky is capable of charging other carriers that originate access traffic destined for South Central's network – and, in fact, its relationship with those carriers (CLEC or otherwise) puts it in an ideal position to do so.

Ultimately, following AT&T Kentucky's rationale, any provider that holds itself out as a delivery or transit service provider could establish connectivity with other providers (or, as in this case, use connectivity already established) and, then, dump third-party traffic onto these providers' networks earning fees for itself while at the same time forcing these unwitting providers to hunt down, bill, and collect for such services. The first full paragraph on page 13 of the Commission's Order protects against this scenario, and should, therefore, be left intact.

[1] Though AT&T Kentucky requests that this entire paragraph be stricken, the only possible issue with its language is that ICOs do not operate "within AT&T Kentucky's service area." AT&T Kentucky, however, seizes upon this single phrase as an excuse to have the entire paragraph stricken and, with it, the portion of the Commission's Order that requires AT&T Kentucky to pay South Central in the event that it delivers access traffic to South Central's network.

RESPONSE

I. AT&T Kentucky's Motion Fails to Meet the Standard Required for Rehearing Pursuant to KRS 278.400.

In order for the Commission to grant a motion for rehearing pursuant to KRS 278.400, the party making the motion must demonstrate that it has "additional evidence that could not with reasonable diligence have been offered on the former hearing." KRS 278.400. The Commission has consistently denied motions made pursuant to KRS 278.400 where the movant failed to present "new evidence or arguments which were not previously considered by the Commission." *In the Matter of: Petition of Bellsouth Telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*, Case No. 2004-00427, 2008 Ky. PUC LEXIS 65 at 2, January 18, 2008; *see also In the Matter of: Joint Application for Approval of the Indirect Transfer of Control Relating to the Merger of AT&T Inc. and Bellsouth Corporation*, Case No. 2006-00136, 2006 Ky. PUC LEXIS 697 at 3, August 21, 2006 ("Intervenors have raised no evidence or arguments not previously considered by the Commission. Thus, the Commission will not grant rehearing").

AT&T Kentucky has failed to meet this standard. AT&T Kentucky has not presented any new evidence or arguments in its Motion that were not previously considered by the Commission. Instead, AT&T Kentucky attempts to substantiate its Motion by citing to its own witness' direct testimony and the hearing transcript in this matter. (AT&T Kentucky Motion at 4-5.) The Commission has already heard this evidence and rejected these arguments regarding AT&T Kentucky's status as a provider of transit and IXC services to facilities-based CLEC end users. The Commission decided against AT&T Kentucky on this issue; finding that, if AT&T Kentucky functions as an IXC, it "should pay access charges to South Central for the toll traffic." (Order at 13).

II. The Commission's Order Correctly Provides for The Contingency Where AT&T Kentucky Acts As an IXC.

AT&T Kentucky claims in its Motion that it "does not act as an IXC (default or otherwise) for any facilities-based CLECs' end users," and, that because of this, the Commission should strike the first full paragraph on page 13 of its Order. (AT&T Kentucky Motion at 4.) In order to substantiate its claim, AT&T Kentucky provides a long and tortured explanation as to why – despite delivering toll and long distance traffic to South Central's network – that traffic should not be billed as access traffic. AT&T Kentucky's claim, however, runs directly counter to the Commission's finding of fact.

For instance, AT&T Kentucky claims that it "does not collect any toll charges from any facilities-based CLEC end users." (AT&T Kentucky Motion at 4.) AT&T Kentucky's lack of a relationship with CLECs' end users is immaterial. Rather, it is AT&T Kentucky's relationship with the CLECs themselves – who are AT&T Kentucky's actual customers for access service – that results in AT&T Kentucky acting as an IXC. AT&T Kentucky is fully capable of billing these CLEC customers by entering into appropriate agreements with them.

In addition, AT&T Kentucky complains that it "does not know how the originating facilities-based CLEC defines its local calling areas" and, as a result, is not able to know the difference between toll and local traffic. (AT&T Kentucky Motion at 5.) This is irrelevant. AT&T Kentucky is conflating retail pricing with wholesale carrier concessions. The incumbent's tariff has been historically used to define the wholesale relationship between carriers, often recognizing that such relationships are separate and distinct from retail pricing decisions. Incumbents – including AT&T Kentucky – do not waive their tariffed access fees simply because the carrier, CLEC or otherwise, delivering the traffic to them chooses to redefine the traffic from toll to "local." If that were the case, then a carrier could simply define the entire

LATA – or state, for that matter – as a "local service area" and thereby bind an incumbent to that decision, thus helping to ensure the profitability of its pricing decision.

AT&T Kentucky further complains that "it does not know what arrangement the CLEC may have with the terminating carrier with respect to jurisdiction of the call." (AT&T Kentucky Motion at 5.) This, too, is irrelevant. All that AT&T Kentucky needs to know is that, if it delivers access traffic to South Central, South Central will (and should be permitted to) bill it accordingly. If South Central or AT&T Kentucky's CLEC customer is unsatisfied with this arrangement, then those parties are free to make alternative arrangements.

AT&T Kentucky's explanation as to why it should not have to pay access charges on the CLEC traffic it delivers to South Central's network is without merit. In its Order, the Commission got it right: if AT&T Kentucky delivers toll or long-distance calls from its CLEC customers to South Central, then it is functioning as an IXC and should pay access charges to South Central accordingly. For this reason, the Commission should uphold its Order.

III. AT&T Kentucky Is Fully Capable of Seeking Payment from the CLECs for Whom It Provides Interexchange Service.

AT&T Kentucky also complains in its Motion that the Commission's Order is inconsistent with the "long applied principle that the 'calling party's network pays." (AT&T Kentucky Motion at 10 (citing the Order at 12).) This is simply not true. The Commission's Order does not prohibit AT&T Kentucky from collecting appropriate charges from the CLECs it serves when those CLECs' customers originate access traffic destined for South Central's network. In fact, this arrangement makes much more sense than that proposed by AT&T Kentucky. In the chain of call delivery, AT&T Kentucky is closer to and directly interconnected with the originating CLEC. It knows who the originating carrier is (through its call detail records), and it can bill that carrier accordingly from its own records. In short, South Central

collects from its direct "cost causer," AT&T Kentucky; and AT&T Kentucky, in turn, collects from its direct "cost causer," its CLEC customer. This is a vastly less complicated arrangement, and completely in line with the principle that "the calling party's network pays."

In arguing that such an arrangement would be inconsistent with the principle that "the calling party's network pays," AT&T Kentucky confuses the billing function with the payment function. South Central does not and has never objected to AT&T Kentucky seeking compensation from the carriers to whom AT&T Kentucky provides services. AT&T Kentucky can assure itself of payment from the entities it chooses to let on its network by entering into appropriate agreements with those entities when it establishes the billable services it provides to those very entities.

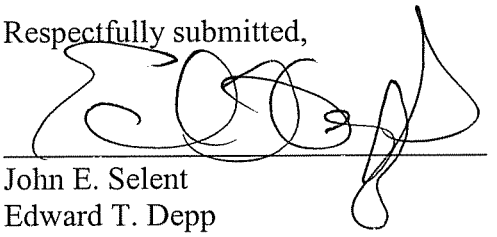
The bottom line is this: when an AT&T Kentucky customer delivers non-local toll or long-distance traffic to AT&T Kentucky and that traffic is destined for termination on South Central's network, AT&T Kentucky should pay access to South Central for this service. AT&T Kentucky can then seek to recoup its own costs from its cost causer, the originating carrier. South Central does not object to such an arrangement, and the Commission's Order does not prohibit it. Therefore, the Commission should deny AT&T Kentucky's Motion.

CONCLUSION

For the reasons stated above, the Commission should deny AT&T Kentucky's Motion. It fails to present the Commission with any new evidence or arguments as required by KRS 278.400. Even under AT&T Kentucky's "cost causer" argument, its logic fails, as AT&T Kentucky is the cost causer to South Central. Moreover, nothing in the Commission's Order would prevent AT&T Kentucky from recouping its costs from the originating CLEC for whom it delivers this CLEC traffic. This arrangement is consistent with applicable law, and it is more

efficient and reasonable for all parties involved. The Commission's Order is consistent with the law and the facts, and AT&T Kentucky's Motion should be denied.

Respectfully submitted,



John E. Selent
Edward T. Depp
Holly C. Wallace
DINSMORE & SHOHL LLP
1400 PNC Plaza
500 W. Jefferson Street
Louisville, Kentucky 40202
(502) 540-2300
(502) 585-2207 (fax)

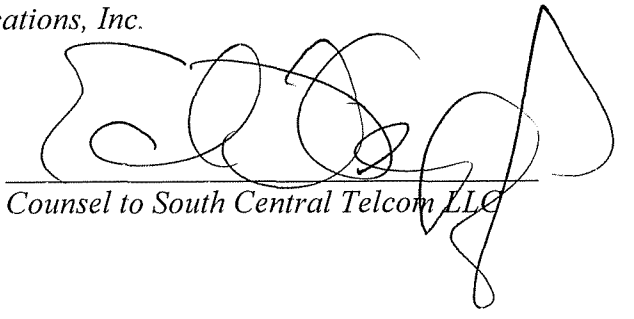
Counsel to South Central Telcom LLC

CERTIFICATE OF SERVICE

I hereby certify a true and accurate copy of the foregoing was served via First Class United States mail on the following this 26th day of July, 2010:

Mary K. Keyer
General Counsel/Kentucky
601 W. Chestnut Street, Room 407
Louisville, KY 40203
Counsel for BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky

Robert A. Culpepper
AT&T
675 West Peach Tree Street, NW
Room 4325
Atlanta, GA 30375
Counsel for BellSouth Telecommunications, Inc.



Counsel to South Central Telcom LLC

794816_1
25122-2