

BellSouth Telecommunications, Inc.

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June 6, 2007

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

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PUBLIC SERVICE
COMMISSION

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

Dear Ms. O'Donnell:

BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky hereby submits for filing its Reply to South Central Telcom LLC's Response to BellSouth's April 30, 2007, letter requesting that the Commission strike and delete from the record and from the file in this case the settlement letter from Brandenburg's counsel, John Selent, to the undersigned counsel dated April 23, 2007.

The original and ten (10) copies of this letter are enclosed for filing.

Sincerely,



Mary K. Keyer

cc: Parties of Record

680450

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)	
)	
BELLSOUTH TELECOMMUNICATIONS, INC)	
)	
Complainant)	
)	
v.)	Case No. 2006-00448
)	
SOUTH CENTRAL TELCOM LLC)	
)	
Defendant)	

BELLSOUTH'S REPLY TO SOUTH CENTRAL TELCOM'S RESPONSE TO
BELLSOUTH'S MOTION TO STRIKE

BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky ("BellSouth"), by counsel, replies to South Central Telcom LLC's ("South Central") Response to BellSouth's Motion to Strike (hereinafter, "*South Central Response*").

The Informal Conference in this case was held on March 21, 2007. BellSouth had notified Mr. Selent before, and notified Mr. Selent and Commission Staff during, the Informal Conference, that BellSouth considered settlement negotiations between the Parties to be confidential and inappropriate for discussion during the Informal Conference. Although the Parties did have some limited general discussion during the Informal Conference about settlement, and South Central agreed to provide BellSouth with a settlement proposal, there was no expectation or requirement by the Commission Staff that Mr. Selent copy the Commission on any such proposal and that the proposal would be filed as a matter of public record in the case. There was no request by the

Commission staff for such information. Counsel for South Central, by filing such proposal with the Commission, totally disregarded the Parties' discussions about and acknowledgement of the confidentiality of settlement negotiations. Additionally, were the Commission to allow such filings, it would set a precedent for other parties to begin filing settlement proposals in cases before the Commission. Such a result does not comport with existing law and public policy.

South Central defends its actions by stating that it "did not offer its settlement proposal into evidence during a formal public hearing." *South Central Response* at 2. Instead, South Central submitted its *Response to the Commission*, the decision maker in this case, "for filing." See Transmittal Letter of John E. Selent to Beth O'Donnell, Executive Director, Kentucky Public Service Commission, dated April 23, 2007 (emphasis added). For South Central to feign surprise that BellSouth would take exception to a proposed settlement agreement being filed publicly in a docket is in itself surprising and disingenuous, particularly in light of the fact that the settlement agreement *proposed by South Central* contains a confidentiality clause in it. Section 6 of the proposed agreement submitted by South Central for filing with the Commission indicates the Parties' intent that the agreement be and remain confidential. It states:

6. This agreement *shall be confidential*, and *each party shall maintain the confidentiality of this agreement*. *If either party is compelled to disclose the existence or terms of this agreement in judicial or administrative proceedings*, such party will *give the other party the opportunity, in advance of such disclosure*, to seek protective arrangements and will cooperate with the other party in that regard. [Emphases added]

By the Parties' previous discussions before and during the Informal Conference and by the *very terms of the proposed agreement itself from South Central*, there was

clearly an intent and expectation by both Parties that the settlement proposal from South Central would be confidential and would not be filed as a matter of public record.

South Central further defends its actions by claiming that it “provided the Commission with a copy of its own settlement proposal in an effort to update the Commission on the progress of the parties’ settlement negotiations.” *South Central Response* at 3. This reasoning is incredulous for three reasons: *first*, there was no request by the Commission for an update on the progress of settlement negotiations in this case, *second*, South Central could easily have updated the Commission on the progress of settlement negotiations, were it so inclined to do so on its own, by informing the Commission that it was providing or had provided an offer of settlement to BellSouth on April 23 and was awaiting a response, and *third*, the settlement proposal itself calls for it to be confidential.

Counsel for South Central, by filing such proposal with the Commission, ignored the Parties’ discussions about the confidentiality of settlement negotiations and the very terms of the proposed agreement itself.

The “law has long fostered voluntary dispute resolution by protecting against the possibility that a compromise or offer of compromise might be used to the disadvantage of a party in subsequent litigation.” *Green River Elec. Corp. v. Nantz*, 894 S.W.2d 643, 646 (Ky. App. 1995) (citations omitted). The Kentucky Rules of Evidence clearly state in part that evidence of compromise or an offer of compromise is not admissible to prove liability for or invalidity of the claim or its amount. KRE 408. In addition, KRE 408 specifically states that “[e]vidence of conduct or statements made in compromise negotiations is likewise not admissible.” Mr. Selent’s proposal sent to AT&T Kentucky’s

counsel¹ contains such evidence and, as such, is inadmissible and should be stricken from the case.

In accordance with KRE 408, such evidence would be admissible if it were to prove "bias or prejudice of a witness, negating [sic] a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution." None of these reasons is present in this case nor has any such reason been given by South Central for filing with the Commission its purported settlement proposal to BellSouth's counsel. There is compelling public policy behind the rule of not admitting evidence of settlement negotiations that encourages and favors settlements between adverse parties. Without some expectation of confidentiality and non-admissibility of settlement negotiations to a trier of fact, parties would be discouraged from engaging in meaningful negotiations. South Central, without consulting with or informing BellSouth, arbitrarily submitted *for filing in this case with the Commission* the settlement proposal sent from South Central's counsel to BellSouth's counsel for no apparent legitimate reason.

Based on Kentucky law and compelling public policy, Mr. Selent's letter and attachment containing settlement negotiations information should not be placed in the Commission file or in the public record. The settlement proposal as written and submitted *for filing in this case* could only have been filed for the purpose of attempting to influence the Commission regarding South Central's claims and the value of such claims. As such, it must be stricken from the record under KRE 408, and should not be included as a part of the file in this case subject to public disclosure.

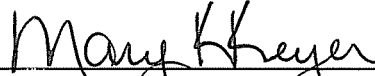
¹ AT&T Kentucky is moving to strike Mr. Selent's letter of April 23, 2007, to AT&T Kentucky's counsel and all accompanying attachments to the letter. South Central alleges in footnote 1 of its response that AT&T Kentucky referenced only the cover letter.

South Central's reliance on a 1974 Maryland case, *Burlington Industries, Inc. v. Exxon Corp.*, 379 F. Supp. 754, 1974 U.S. Dist. LEXIS 7794, 183 U.S.P.Q. (BNA) 729 (D. Md. 1974) to support its position that BellSouth somehow waived a privilege to confidentiality is misplaced. That case involved a discovery dispute and the attorney client privilege and work product privilege, neither of which is at issue here.

Moreover, in addition to the fact that evidence of settlement negotiations is not admissible under the Kentucky Rules of Evidence unless there is some legitimate purpose such as those specified in KRE 408, none of which is present in this case, and the public policy behind that rule, there is a further compelling public policy reason for not allowing settlement proposals to be arbitrarily filed by a party in cases before the Commission. If the Commission allows this proposal to remain in the record, it would set a precedent that would open the floodgates for all parties to begin filing a barrage of settlement proposals back and forth between the parties in an effort to get their positions in front of the Commission. This would place the Commission, the trier of fact, in the middle of negotiations, which is inconsistent with both the law and public policy.

Based on the foregoing, the Commission should grant BellSouth's motion to strike from the record and remove and destroy South Central's filing of its settlement proposal, and all copies of it, from the Commission's files.

Respectfully submitted,



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608448

CERTIFICATE OF SERVICE -- KPSC 2006-00448

It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by U.S. mail, this 6th day of June, 2007.

John E. Selent
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