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August 14, 2009

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PUBLIC SERVICE
COMMISSION

Via Hand Delivery

Hon. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

Re: In the Matter of: BellSouth Telecommunications, Inc. v. Brandenburg Telephone Company, Case No. 2006-00546

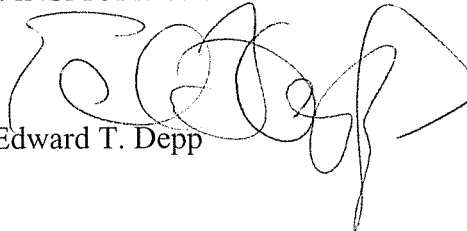
Dear Mr. Derouen:

Enclosed for filing in the above-referenced matter, please find the original and eleven (11) copies of the prefiled rebuttal testimony of Allison T. Willoughby on behalf of Brandenburg Telephone Company. Please file-stamp one copy and return it to us in the enclosed self-addressed, postage prepaid envelope.

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

Sincerely,

DINSMORE & SHOHL LLP


Edward T. Depp

Enclosures

cc: All Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

BELLSOUTH TELECOMMUNICATIONS, INC.)

COMPLAINANT)

v.)

BRANDENBURG TELEPHONE COMPANY)

DEFENDANT)

) CASE NO. 2006-00546

PREFILED REBUTTAL TESTIMONY OF ALLISON T. WILLOUGHBY
ON BEHALF OF
BRANDENBURG TELEPHONE COMPANY

August 14, 2009

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**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
COMPLAINANT)	
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v.)	CASE NO. 2006-00546
)	
BRANDENBURG TELEPHONE COMPANY)	
)	
DEFENDANT)	

**PREFILED REBUTTAL TESTIMONY OF ALLISON T. WILLOUGHBY
ON BEHALF OF
BRANDENBURG TELEPHONE COMPANY**

INTRODUCTION

- 1 **Q. WHAT IS YOUR NAME?**
- 2 A. My name is Allison T. Willoughby.
- 3 **Q. WHO IS YOUR EMPLOYER?**
- 4 A. My employer is Brandenburg Telephone Company ("Brandenburg Telephone").
- 5 **Q. WHAT IS YOUR POSITION AT BRANDENBURG TELEPHONE?**
- 6 A. I am the Assistant General Manager of Brandenburg Telephone.
- 7 **Q. HAVE YOU PREVIOUSLY CAUSED TESTIMONY TO BE FILED IN THIS CASE?**
- 8 A. Yes, I have. That testimony was filed on or about July 24, 2009, and it sets forth my
- 9 educational and professional background, as well as my duties and responsibilities at Brandenburg
- 10 Telephone.

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?**

2 A. I am here to rebut the testimony of Tim Watts, Mark Neinast, and J. Scott McPhee, the
3 witnesses testifying on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky
4 ("BellSouth"). Combined, their testimony seeks to establish BellSouth's position regarding the ACS
5 traffic and CMRS traffic disputes. I will address these two issues in turn.

6 1.

7 **ACS TRAFFIC**

8
9 **Q. HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE DIRECT TESTIMONY**
10 **FILED BY BELLSOUTH'S WITNESSES REGARDING ACS TRAFFIC?**

11 A. Yes, I have.

12 **Q. IN HIS TESTIMONY, MR. NEINAST ATTEMPTS TO SUBSTANTIATE**
13 **BELLSOUTH'S ACS TRAFFIC CLAIM BY STATING THAT HE HAS VERIFIED THAT**
14 **BELLSOUTH HAS NOT ROUTED ACS TRAFFIC OVER THE EAS TRUNKS SINCE AT**
15 **LEAST 2000. HAS BELLSOUTH PROVIDED BRANDENBURG TELEPHONE OR THE**
16 **COMMISSION WITH ANY EVIDENCE SUPPORTING THIS CLAIM?**

17 A. No, it has not. In fact, BellSouth has yet to provide Brandenburg Telephone or the
18 Commission with any documents supporting its claim, despite multiple requests for it to do so.

19 **Q. PLEASE BRIEFLY SUMMARIZE THE MULTIPLE REQUESTS TO WHICH YOU**
20 **REFER.**

21 A. In May of 1998, when BellSouth first remitted payment for ACS traffic to Brandenburg
22 Telephone through the Settlement Process, Brandenburg called BellSouth to inquire into the nature
23 of the traffic. BellSouth did not respond to the inquiry. More than six years later in 2004, BellSouth
24 suddenly claimed that it had been overpaying Brandenburg Telephone for ACS traffic and demanded
25 that Brandenburg Telephone reimburse it for two years of alleged overpayments. As any prudent

1 business would do, Brandenburg Telephone requested that BellSouth provide it with call detail
2 records showing that BellSouth paid Brandenburg Telephone twice for the same calls. As of May
3 11, 2004, when BellSouth and Brandenburg Telephone first addressed the issue, BellSouth would
4 have still had call detail records from the period in question because, as BellSouth admits, it keeps
5 60 days worth of switch records. At that moment, BellSouth should have, on their own accord,
6 provided what records they had when they made their claim.

7 Yet, rather than provide Brandenburg Telephone with these call detail records to support its
8 claim, or any portion thereof, BellSouth later claimed that it had destroyed them all. It is hard to
9 imagine that, if BellSouth truly believed that it overpaid Brandenburg Telephone for ACS traffic, it
10 would not have taken steps to save the records it needed to prove its claim. In fact, from the moment
11 BellSouth suspected it may have overpaid for ACS traffic, it was BellSouth's obligation to take
12 affirmative steps to save any and all records that either supported or refuted its claim. BellSouth
13 failed to do so at its own risk.

14 Brandenburg Telephone again asked BellSouth for documentation supporting its claim in
15 2007, as part of the current formal proceeding, when Brandenburg Telephone served its first data
16 requests requesting any and all documentation in BellSouth's possession that would prove that
17 Brandenburg Telephone had billed BellSouth for this traffic through its CABS process. All
18 BellSouth produced in response to the request was a manually generated spreadsheet it claimed
19 reflected a summary of traffic BellSouth delivered to Brandenburg Telephone over the BellSouth
20 Toll Group ("BTG") for a six-month period in 2003. This spread sheet did not tie to any billing by
21 Brandenburg Telephone nor provide any data that would permit Brandenburg Telephone to
22 substantiate BellSouth's claim.

23 Then, as recently as June 12, 2009, Brandenburg Telephone served supplemental data
24 requests on BellSouth requesting that it provide any and all updated documentation in BellSouth's

1 possession that either supports or refutes BellSouth's claim that it overpaid for ACS traffic.
2 BellSouth responded by stating it did not possess any updated documentation responsive to the
3 request.

4 Yet now, clearly lacking data to support this significant financial demand on Brandenburg
5 Telephone, Mr. Neinast testifies that he "reviewed" something he referred to as "Translations Work
6 Instruction" "records," and "validated" that there were no orders to change the way ACS traffic is
7 routed since at least 2000. In other words, Mr. Neinast reviewed internal documents that allegedly
8 support BellSouth's claim after repeatedly denying any such documents exist; the very documents
9 which remain notably absent from Mr. Neinast's testimony. In fact, it appears that Mr. Neinast may
10 have over-stated the substance of what he reviewed because Mr. Watts, in his testimony, appears to
11 step back from Mr. Neinast's conclusive claims. Instead of referencing any internal documents, Mr.
12 Watts states that in lieu of any documentary proof, Bellsouth has offered "assurances" to
13 Brandenburg Telephone that it has not changed how it routes ACS traffic since 2000. And none of
14 BellSouth's recent "analysis" supports their claim that Brandenburg Telephone was paid twice for
15 this traffic. Brandenburg Telephone will not, as any sensible business would not, reimburse
16 BellSouth for alleged overpayments based merely on BellSouth's "assurances" that it has not routed
17 ACS traffic over the EAS trunks since 2000.

18 **Q. DOES BELLSOUTH'S DIRECT TESTIMONY EXPLAIN WHY IT BEGAN**
19 **MAKING PAYMENTS FOR ACS TRAFFIC THROUGH THE SETTLEMENT PROCESS?**

20 A. No, it does not. Mr. Watt's testimony sought to explain the background behind the ACS
21 traffic billing dispute. He does not dispute or deny that BellSouth caused itself to pay for ACS
22 traffic for nearly eight years through the Settlement Process. What Mr. Watt's testimony, or anyone
23 else's for that matter, fails to explain is why BellSouth ever started paying for ACS traffic through
24 the settlement process in the first place. Brandenburg Telephone instituted its CABS billing system

1 in 1995. BellSouth admits that it did not start delivering ACS traffic to Brandenburg until July 1,
2 1996, even though it did not start paying for that traffic until May of 1998. If BellSouth was sending
3 ACS traffic over the BTG instead of the EAS trunks from the beginning and paying for that traffic
4 through the CABS process, as it claims, then the question remains as to why it ever began including
5 this traffic as part of the Settlement Process.

6 Curiously, Mr. Neinast admits in his testimony that he only reviewed BellSouth's
7 Translations Work Instruction records back to 2000, an arbitrary date. If BellSouth began its ACS
8 calling plan in 1996, why not go back four more years to verify that BellSouth never routed ACS
9 traffic over the EAS trunks? If it did, it might help explain why BellSouth included ACS traffic as
10 part of the Settlement Process in the first place.

11 It is also worth noting that, around the same time as Brandenburg Telephone began receiving
12 ACS payments from BellSouth through the Settlement Process, it also started receiving payment
13 from GTE for the its ACS traffic. Just as Brandenburg Telephone had requested more information
14 from BellSouth, it called GTE to inquire into the nature of the traffic for which GTE was paying
15 Brandenburg Telephone. Ultimately, a GTE representative confirmed to Brandenburg Telephone
16 that the payments were accurate and no double billing occurred. Because Brandenburg Telephone
17 never heard back from BellSouth, it reasonably assumed that the same was the case for it.

18 **Q. WHEN BELLSOUTH STOPPED PAYING FOR ACS TRAFFIC THROUGH THE**
19 **SETTLEMENT PROCESS, WHY DID BRANDENBURG TELEPHONE NOT COMPLAIN**
20 **OR OTHERWISE PROTEST?**

21 A. For two reasons. First, as BellSouth admits, Brandenburg Telephone is wholly dependent
22 upon BellSouth to determine what amount BellSouth owes through the settlement process. Because
23 ACS traffic is indistinguishable to Brandenburg Telephone from other traffic for which Brandenburg
24 would not otherwise be compensated, BellSouth's records are the only way to verify what is actually

1 owed. So, in reality Brandenburg Telephone had no other option than to rely on what BellSouth
2 claimed it owed.

3 Second, and perhaps more important, as the volumes of ACS traffic consistently dropped
4 month to month Brandenburg reasonably concluded that ACS was a service that was being phased
5 out. As Attachment 1 to Mr. Watt's direct testimony confirms, the amount BellSouth was remitting
6 to Brandenburg Telephone through the settlement process for ACS traffic was quickly approaching
7 zero: from April of 2002 to March of 2004 the amount of ACS traffic had dropped over 83%. Had
8 BellSouth not informed us that they were no longer going to compensate us for this traffic through
9 the Settlement Process, Brandenburg Telephone would simply not have even questioned the loss of,
10 and therefore compensation for, this traffic.

11 Therefore, by the time BellSouth notified us that it was no longer making payments for ACS
12 traffic through the settlement process, it was just not that big of a surprise.

13 **Q. IS THERE ANYTHING ELSE YOU WOULD LIKE TO SAY ABOUT THE ACS**
14 **TRAFFIC DISPUTE BEFORE TURNING TO THE CMRS ISSUE?**

15 A. Yes. Brandenburg Telephone is a small company that has tried in good faith on numerous
16 occasions to get an answer from BellSouth as to the nature of the ACS traffic from the date
17 settlement was initiated. Yet, BellSouth has simply ignored our requests. In spite of Brandenburg
18 Telephone's attempts to act with due diligence, BellSouth persisted in its negligence. If at anytime
19 BellSouth would have substantiated its claim, even with the portion of call detail records it would
20 have still had as of May 11 2004, then Brandenburg Telephone and BellSouth would have been in a
21 much better position to resolve this matter.

22 Moreover, I would simply like to reiterate that BellSouth has the burden of proof in this
23 matter. If BellSouth is going to come forward with a claim that it has overpaid, especially on a bill
24 that it caused itself to pay and for which it alone had records to support, then it needs to somehow

1 substantiate those claims. This ACS traffic dispute is a result of BellSouth's own negligence.
2 BellSouth states that it was negligent in making what it alleges were double payments. It was
3 certainly negligent in ignoring Brandenburg Telephone's efforts to ascertain the reason for this
4 payment in the first place. It was negligent in not keeping the call detail records that could
5 substantiate its claims even after it became aware of the alleged problem.

6 Now BellSouth seeks to give Brandenburg Telephone "assurances" that it "verified" with its
7 own personnel how ACS traffic was routed and that it "reviewed" internal Translations Work
8 Instruction documents that it has never produced in place of documented proof. Ultimately,
9 BellSouth's claim amounts to nothing more than it saying, "Trust us. You owe us." More to the
10 point, BellSouth has never even proved that it paid Brandenburg Telephone for this traffic through
11 the CABS process.

12 As someone involved in managing a company that is beholden to its shareholders to account
13 for the company's financial well-being, this kind of "proof" falls well short of what is necessary to
14 substantiate a claim for reimbursement. No prudent business person would agree to this without
15 sufficient proof.

16 **2.**

17 **CMRS TRAFFIC**

18 **Q. HAVING REVIEWED BELLSOUTH'S TESTIMONY, WHAT DO YOU BELIEVE**
19 **THE CENTRAL ISSUES ARE IN THE CMRS DISPUTE?**

20 A. As BellSouth correctly identifies in its direct testimony, the CMRS traffic issue basically
21 boils down to a contract dispute. So, let me begin with what I believe is undisputed. First,
22 BellSouth and Brandenburg Telephone were, for the period in question, parties to a CMRS
23 Agreement for the exchange of certain CMRS traffic. Second, it is undisputed that pursuant to
24 Section 2.07 of that CMRS Agreement, Brandenburg Telephone was obligated to "accept

1 [BellSouth's] measurement of minutes of use and industry standard call detail records as the basis for
2 billing from and compensation to [Brandenburg Telephone] for Covered CMRS Provider Traffic."
3 (emphasis added). Third, it is undisputed that Section 1.05 of that CMRS Agreement defines
4 "Covered CMRS Provider Traffic" as "CMRS Provider Traffic of a Signatory CMRS Provider for
5 which [BellSouth] generates and delivers to [Brandenburg Telephone] accurate industry standard
6 call detail records identifying the originating CMRS Provider and minutes of use for such CMRS
7 Provider Traffic." (emphasis added).

8 What Brandenburg Telephone does dispute is this. First, Brandenburg Telephone disputes
9 that under Section 2.07 of the CMRS Agreement it must accept BellSouth's call detail records as the
10 sole basis for its billing where those records were not billed by Brandenburg Telephone, inaccurate,
11 or included traffic for non-covered, non-signatory CMRS traffic. As such, we dispute the testimony
12 of Mr. McPhee and Mr. Watts that Brandenburg Telephone ever agreed to accept, without question,
13 whatever call detail records BellSouth sent to it as the sole basis for its billing. Similar to the ACS
14 traffic dispute, BellSouth basically believes that Brandenburg Telephone should have simply taken
15 its word for whether its records were accurate. Except here, it believes Brandenburg Telephone was
16 contractually obligated to do so.

17 The problem, however, with this interpretation of the CMRS Agreement and of Section 2.07
18 in particular is that it ignores the word "accurate" in the definition for CMRS Provider Traffic in
19 Section 1.05. If Brandenburg Telephone is obligated to accept BellSouth's call detail records,
20 BellSouth is no less obligated to make certain that those records are accurate. Moreover, this
21 interpretation of the CMRS Agreement completely obviates my ability to act as a prudent business
22 person especially one who is obligated to safeguard the financial well-being of the company for
23 shareholders and customers alike. Simply put, Brandenburg Telephone is not obligated under the

1 CMRS Agreement to use call records for traffic that is not covered under the CMRS Agreement or
2 has not been billed by Brandenburg Telephone as the basis for its billing.

3 Second, Brandenburg Telephone disputes that it does not have the ability to verify the call
4 detail records sent to it short of "request[ing] an audit." In fact, the testimony of Mr. Watts appears
5 to acknowledge this very possibility. When asked what he thought Brandenburg Telephone should
6 have done if it "disagreed" with BellSouth's records, Mr. Watts offers an alternative to requesting a
7 formal audit. Moreover, the language of the CMRS Agreement itself does not obligate Brandenburg
8 Telephone to do anything. Section 2.07 of the CMRS Agreement specifically states that "any party
9 may request an audit of such measurements of minutes within twelve months." "May" does not
10 equal "must."

11 There is nothing in the CMRS Agreement that requires that an "audit" is the only possible
12 method for a Rural LEC to make certain that the records it is accepting do not include CMRS
13 minutes not actually billed, are accurate, and only include Covered CMRS Provider Traffic. It is
14 important to note again, as I did in my direct testimony, that between January of 2008 and August of
15 2009, Brandenburg Telephone has given BellSouth credit for 98.7% of the CMRS traffic it has
16 claimed is covered. As it stands today, BellSouth actually owes Brandenburg Telephone a large
17 amount in underpayments due to its continued withholding of payments from Brandenburg
18 Telephone on a going forward basis.

19 **Q. DO YOU BELIEVE BRANDENBURG TELEPHONE FULFILLED ITS**
20 **OBLIGATIONS UNDER SECTION 2.07 OF THE CMRS AGREEMENT?**

21 A. Yes, without a doubt. Brandenburg Telephone accepted BellSouth's call detail records for
22 Covered CMRS Traffic and used them as the basis for their billing, or in this instance gave
23 BellSouth the appropriate credit. This is what the CMRS Agreement requires, and it is exactly what
24 Brandenburg Telephone did.

1 What BellSouth complains of, however, is the fact that Brandenburg Telephone actually
2 reviewed the detail of the call detail records, and excepted out any traffic that was non-signatory /
3 non-covered CMRS traffic or traffic that was not actually billed to BellSouth by Brandenburg
4 Telephone. It was well within Brandenburg Telephone's reasonable business judgment to verify the
5 records. Moreover, Brandenburg Telephone was not obligated to use BellSouth's call detail records
6 for unbilled traffic or non-signatory/non-covered CMRS traffic as the basis for its billing. BellSouth
7 wants to cry "foul" and say that Brandenburg Telephone could only do such verification by
8 requesting a "formal audit" of its records. But this simply makes no sense. If a party to this CMRS
9 Agreement discovers and verifies actual inaccurate call detail records, they have no obligation to
10 base their billing on that data.

11 **Q. DID BRANDENBURG TELEPHONE BREACH THE CMRS AGREEMENT**
12 **WITH BELLSOUTH BY VERIFYING THE CALL DETAIL RECORDS PROVIDED BY**
13 **BELLSOUTH?**

14 A. No. The CMRS Agreement does not obligate Brandenburg Telephone to accept from
15 BellSouth what it knows to be inaccurate call detail records. In fact, what Brandenburg Telephone
16 did in this instance is similar to what any prudent person would do when they receive, for instance,
17 their credit card bill in the mail. A prudent person opens the bill and looks at the line item detail to
18 make certain that there are no errors on the bill. If a prudent person can do such verification of their
19 credit card bill, then a prudent business like Brandenburg Telephone can, no less, verify whether or
20 not individual records in the call detail sent to it by BellSouth are accurate.

21 In any event, as I stated above, the CMRS Agreement does not require or obligate
22 Brandenburg Telephone to request an audit as the only method for protecting its business interests.
23 To interpret the CMRS Agreement otherwise would lead to the obviation of the RLEC's ability to act
24 as any prudent business would.

1 **Q. IS THERE ANYTHING ELSE YOU WOULD LIKE TO SAY AS IT RELATES TO**
2 **THE CMRS TRAFFIC DISPUTE?**

3 A. I would like to add that what seems to get lost in the CMRS traffic dispute is that the very
4 catalyst for Brandenburg Telephone's decision to verify the call detail records sent by BellSouth was
5 BellSouth's breach of the CMRS Agreement by including traffic not billed by Brandenburg
6 Telephone and non-signatory / non-covered CMRS traffic in those records. Whatever one thinks of
7 Brandenburg Telephone's decision to act carefully and protect its business interests, BellSouth does
8 not come to this dispute with clean hands.

9 In fact, even though Mr. McPhee's testimony harps on the "flawed" process by which
10 Brandenburg Telephone verified the records sent to it, this is somewhat of a red herring. It is well
11 known between the parties that Brandenburg Telephone has since corrected whatever issues
12 BellSouth identified. In any event, while those "flaws" may have initially resulted in a slight under-
13 credit to BellSouth for claimed CMRS traffic, as it stands today BellSouth actually owes
14 Brandenburg Telephone a large amount in underpayments due to BellSouth's continued withholding
15 of payments from Brandenburg Telephone on a going forward basis.

16 3.

17 **CONCLUSION**

18 **Q. IS THERE ANYTHING ELSE YOU WOULD LIKE TO ADD IN CLOSING?**

19 Yes. I would like briefly to address what I believe is an underlying theme in these two
20 disputes. Ultimately what appears to be at issue here are two very different styles of business
21 management. In one instance BellSouth claims that for nearly nine years it "accidentally" caused
22 itself to pay twice for traffic that it should not have, and then destroyed the very data that would have
23 substantiated its claims. Then in another instance BellSouth essentially asks that Brandenburg
24 Telephone operate in a similar imprudent way by not verifying whether call detail records sent to it

1 are in fact accurate. Maybe a large company like BellSouth can play fast and loose with the
2 management of its business, but Brandenburg Telephone must be more prudent.

3 **Q. HOW DOES BRANDENBURG TELEPHONE RECOMMEND THAT THE**
4 **COMMISSION RESOLVE THIS DISPUTE?**

5 A. Brandenburg Telephone requests that the Commission deny BellSouth's claims that it
6 overpaid Brandenburg Telephone for the two types of traffic at issue.

7 BellSouth is solely to blame for the ACS portion of this dispute. BellSouth caused itself, on
8 its own initiative, to make payment to Brandenburg Telephone for the ACS traffic, ostensibly
9 because it had CDRs which required it to make those payments. BellSouth then destroyed those
10 CDRs – the only records that would be able substantiate its claims – knowing that doing so would
11 jeopardize its position. In their place, BellSouth has offered what it describes as "assurances" that
12 what it says about ACS traffic is true. This is simply not enough to fulfill its burden of proof,
13 whether in the context of a Commission proceeding or in the context of prudent business practice.

14 As for the CMRS traffic dispute, Brandenburg Telephone fulfilled its obligations under the
15 CMRS Agreement. It accepted the call detail records provided to it by BellSouth, just as it properly
16 exercised its reasonable business judgment to verify that those records substantiated traffic actually
17 covered under the CMRS Agreement. BellSouth has no proof that it overpaid Brandenburg
18 Telephone for CMRS traffic (pursuant to the CMRS Agreement), and its claim, therefore, should be
19 dismissed. In fact, BellSouth should immediately pay Brandenburg Telephone the outstanding
20 amount it has withheld to date, and begin paying the monthly CABs bills as billed by Brandenburg
21 Telephone on a going forward basis.

22 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

23 A. Yes.

24

CERTIFICATE OF SERVICE

I hereby certify a true and accurate copy of the foregoing was served by first-class United States mail on the following individuals this 14th day of August, 2009.

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



Counsel to Brandenburg Telephone Company

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