



Mary K. Keyer
General Counsel
Kentucky Legal Department

AT&T Kentucky
601 W. Chestnut Street
Room 407
Louisville, KY 40203

T 502-582-8219
F 502-582-1573
mary.keyer@att.com

October 15, 2009

VIA COURIER

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

RECEIVED

OCT 15 2009
PUBLIC SERVICE
COMMISSION

Re: BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky, Complainant
v. Brandenburg Telephone Company, Defendant
PSC 2006-00546

Dear Mr. Derouen:

Enclosed for filing in this case are the original and four (4) copies of the Post-Hearing Brief of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky.

Portions of AT&T Kentucky's Post-Hearing Brief contain confidential information and, pursuant to 807 KAR 5:001, § 7, AT&T Kentucky files herewith its Motion for Confidentiality requesting that the Commission afford confidentiality to that material. Specifically, AT&T Kentucky requests confidential treatment of the information highlighted on pages 6, 8 and 24 of AT&T Kentucky's Post-Hearing Brief. AT&T Kentucky also relies on its Petitions for Confidentiality previously filed in this case on December 13, 2006, March 7, 2007, July 2, 2009, July 24, 2009, and August 19, 2009, which requested confidential treatment of the same or similar information.

Sincerely,


Mary K. Keyer

Enclosures

cc: Parties of Record

744697

EDITED

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
 BELLSOUTH TELECOMMUNICATIONS, INC.)
)
 Complainant)
) Case No.:
 v.) 2006-00546
)
 BRANDENBURG TELEPHONE COMPANY)
)
 Defendant)

MOTION FOR CONFIDENTIALITY OF
BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T KENTUCKY

Petitioner, BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky"), by counsel, hereby moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission"), pursuant to KRS 61.878 and 807 KAR 5:001, § 7, to classify as confidential the highlighted information on pages 6, 8 and 24 of the Post-Hearing Brief of AT&T Kentucky filed herewith. The material that is highlighted contains information specific to Brandenburg Telephone Company in the conduct of its business with AT&T Kentucky.

The Kentucky Open Records Act exempts certain information from the public disclosure requirements of the Act, including certain commercial and also information the disclosure of which is prohibited by federal law or regulation. KRS 61.787(1)(c)1 and 61.878(1)(k). To qualify for the commercial information exemption and, therefore, keep the information confidential, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors and the parties

seeking confidentiality if openly discussed. KRS 61.878(1)(c)1; 807 KAR 5:001 § 7.

The Commission has taken the position that the statute and rules require the party to demonstrate actual competition and the likelihood of competitive injury if the information is disclosed.

The information for which AT&T Kentucky seeks confidentiality contains customer-specific information. Specifically, the information that is highlighted on page 6, as well as a portion of the information highlighted on page 24, is information relative to the amount of overpayments, plus interest, that AT&T Kentucky made to Brandenburg for ACS Traffic during the relevant period. In addition, the information that is highlighted on page 8, as well as a portion of the information highlighted on page 24, is information regarding the amount of money which Brandenburg invoices and AT&T Kentucky pays to Brandenburg for Covered CMRS Provided Traffic pursuant to the CMRS Agreement among AT&T Kentucky, the Rural LECs' and the CMRS Providers. All of this information is specific to Brandenburg Telephone Company in the conduct of its business with AT&T Kentucky. Information provided to the Commission concerning specific customers is customer proprietary network information ("CPNI") and should not be publicly disclosed without the approval of the individual customers. Disclosure of customer-specific information is subject to obligations under Section 222 of the Communications Act of 1937 as amended by the Telecommunications Act of 1996. Federal law imposes the obligation to maintain the confidentiality of such information from public disclosure when the disclosure of such information or records is prohibited by federal law or regulation. Therefore, because CPNI is protected from disclosure by federal law, this information should be afforded proprietary treatment.

Public disclosure of the identified information would provide competitors, namely CLECs and other CMRS Providers, with an unfair competitive advantage. The Commission should also grant confidential treatment to the information for the following reasons:

(1) The information for which AT&T Kentucky is requesting confidential treatment is not known outside of AT&T Kentucky;

(2) The information is not disseminated within AT&T Kentucky and is known only by those of AT&T Kentucky's employees who have a legitimate business need to know and act upon the information;

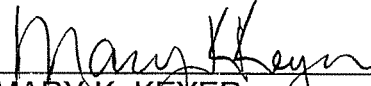
(3) AT&T Kentucky seeks to preserve the confidentiality of this information through appropriate means, including the maintenance of appropriate security at its offices; and

(4) By granting AT&T Kentucky's petition, there would be no damage to any public interest.

(5) In addition, the Commission should grant confidentiality for the reasons set forth in its Order dated March 31, 2006, in Case No. 2005-00533, SouthEast Telephone, Inc., v. BellSouth Telecommunications, Inc.

For the reasons stated herein, the Commission should grant AT&T Kentucky's request for confidential treatment of the identified information.

Respectfully submitted,



MARY K. KEYER
601 W. Chestnut Street, Room 407
Louisville, KY 40203
(502) 582-8219
mary.keyer@att.com

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.
D/B/A AT&T KENTUCKY

744663

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)	
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
)	
Complainant)	
)	
v.)	Case No.:
)	2006-00546
)	
BRANDENBURG TELEPHONE COMPANY)	
)	
Defendant)	

**POST-HEARING BRIEF OF BELLSOUTH
TELECOMMUNICATION, INC., D/B/A AT&T KENTUCKY**

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky"), by counsel, files its post-hearing brief with the Kentucky Public Service Commission ("Commission"). For the reasons stated herein, the Commission should order Brandenburg Telephone Company ("Brandenburg") to reimburse AT&T Kentucky for (1) overpayments made for Area Calling Service traffic ("ACS Traffic") terminated by Brandenburg from April 2002 through March 2004, and (2) overpayments made by AT&T Kentucky to Brandenburg for certain Commercial Mobile Radio Service ("CMRS") minutes of use delivered to Brandenburg from May 1, 2004, through May 2005, and (3) continue to use AT&T Kentucky's EMI 110101 call detail records as the basis for the

billing from and compensation to Brandenburg for Covered CMRS Provider Traffic as ordered by this Commission's on November 9, 2007, in the CMRS/RLEC Arbitration.¹

GENERAL OVERVIEW

This case involves two local exchange carriers - AT&T Kentucky, an incumbent local exchange carrier, and Brandenburg, a rural local exchange carrier - both of which provide telecommunications services in Kentucky. As such, AT&T Kentucky and Brandenburg exchange telecommunications traffic, including the two types of traffic at issue in this case – ACS Traffic and CMRS Traffic.

AT&T Kentucky over compensated Brandenburg for both ACS Traffic and CMRS Traffic as further explained below and is entitled to reimbursement for the overpayments for the relevant time periods, plus interest.

FACTUAL BACKGROUND

ACS Traffic Dispute

In or around the mid-1990s, AT&T Kentucky and some rural local exchange companies, also referred to as independent telephone companies, began offering various optional local calling plans to their end users.² These plans expanded the end users' local calling areas so that calls that were previously billed as long distance calls were treated as local calls to the end user under these optional plans.³ "ACS Traffic" as

¹ Consolidated Arbitration Proceedings pursuant to 47 U.S.C. § 252(c), Kentucky Public Service Commission Case No. 2006-00215, *In the Matter of: Petition of Ballard Rural Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with American Cellular f/k/a/ ACC Kentucky License LLC, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, et al.* ("CMRS/RLEC Arbitration November 9, 2007 Order")

² Hearing Transcript ("Tr.") at 58-59, lines 24-25, 1-5.

³ Direct Testimony of Tim Watts ("Watts Direct") at 3-4, lines 19-22; Tr. at 62, lines 12-13; Tr. at 103, lines 6-15.

used in this docket is a generic term that refers to the traffic included in AT&T Kentucky's expanded local calling areas under optional local calling plans such as Area Plus.⁴

Effective January 1, 1985, Brandenburg and AT&T Kentucky entered into an Agreement for the Provision of Telecommunications Services and Facilities ("Agreement"),⁵ describing a settlements process whereby rather than Brandenburg billing AT&T Kentucky for services provided, AT&T Kentucky netted amounts due to and from Brandenburg and remitted payment to Brandenburg ("Settlements Process"). When AT&T Kentucky and other independent telephone companies began offering various optional calling plans throughout the AT&T Southeast nine-state region, AT&T Southeast implemented the ACS Settlements System as part of the overall Settlement Process provided for in the Agreement to capture ACS Traffic for each independent telephone company.⁶

AT&T Kentucky compensated Brandenburg for terminating ACS Traffic under the Agreement through the Settlements Process from approximately 1997 until May 2004.⁷ Samples of the monthly Form SN642-ACS statements that reflect the amount paid by

⁴ Watts Direct at 3, lines 12-14.

⁵ A copy of the Agreement and relevant Annex 1 are attached as Exhibit 1 to the Complaint. While there was no separate written agreement for ACS Traffic itself between the Parties, compensation for such traffic was covered by the Agreement. Watts Direct at 3, lines 1-4; Tr. at 58-59, lines 24-25, 1-20; Tr. at 61, lines 17-22.

⁶ Rebuttal Testimony of Tim Watts ("Watts Rebuttal") at 5-6, lines 20-23, 1-4.

⁷ Watts Direct at 5, lines 10-12. Direct Testimony of Allison Willoughby ("Willoughby Direct") at 6, lines 9-11. Although the actual time period for the overpayments dated back to at least 1997, AT&T Kentucky is only requesting reimbursement from April 2002 through March 2004, two years from the date AT&T Kentucky discovered the overpayments. If Brandenburg were to reimburse AT&T Kentucky for that two-year period, Brandenburg will still have received a windfall for the overpayments made by AT&T Kentucky to Brandenburg from at least 1997 to April 2002.

AT&T Kentucky for ACS Traffic through this Settlements Process are attached as Exhibit 2 to AT&T Kentucky's Complaint.⁸

In or around 1995, rather than relying entirely on the Settlements Process for payments from AT&T Kentucky, Brandenburg states it implemented and began submitting bills to AT&T Kentucky for services rendered through Brandenburg's Carrier Access Billing Service (CABS).⁹ Brandenburg's CABS billing to AT&T Kentucky included billing for "all minutes of use that [AT&T Kentucky] terminates to Brandenburg on the intralata toll trunks"¹⁰ AT&T Kentucky compensated Brandenburg for the termination of the traffic routed over the common transport trunk group through the CABS billing from Brandenburg.¹¹ AT&T Kentucky routed its ACS Traffic over the intralata toll (or common transport) trunk group, and therefore compensated Brandenburg for the termination of that traffic through the CABS billing from Brandenburg.¹²

When AT&T Kentucky implemented the ACS Settlements System, it did so on a regionwide basis to capture the ACS Traffic for compensation purposes for all independent telephone companies.¹³ The rates for carriers like Brandenburg that were billing AT&T directly for that traffic through CABS billing should have been zeroed out so there was no compensation through the Settlements System.¹⁴ Unfortunately,

⁸ Watts Direct at 5, lines 7-9.

⁹ Willoughby Direct at 5-6, lines 23-24, 1.

¹⁰ See letter dated June 1, 2004, from Randall Bradley, Brandenburg Controller, to Joe Pitard, AT&T Settlements Manager, attached as Exhibit TW-1 to Watts Rebuttal Testimony.

¹¹ Watts Direct at 8, lines 18-20; Watts Rebuttal at 7, lines 21-23.

¹² Watts Direct at 8, lines 21-23; Watts Rebuttal at 7, lines 19-20; Direct Testimony of Mark Neinast ("Neinast Direct") at 4, lines 7-9.

¹³ Tr. at 59, lines 11-22.

¹⁴ Tr. at 59-60, lines 23-25, 1-4.

Brandenburg's rate was not zeroed out and AT&T Kentucky paid Brandenburg for the ACS Traffic through both the ACS Settlements System and CABS billing.¹⁵

AT&T Kentucky discovered it was overcompensating Brandenburg for ACS Traffic in May 2004,¹⁶ and notified Brandenburg via letter dated May 12, 2004.¹⁷ AT&T Kentucky requested an adjustment for the amount of the overpayment, plus interest, and beginning in May 2004, ceased paying Brandenburg for the ACS Traffic through the Settlements Process.¹⁸ Brandenburg has never disputed AT&T Kentucky's discontinuance of these payments.¹⁹

In an effort to resolve the matter, AT&T Kentucky provided the following information to Brandenburg documenting the overpayments and confirming that ACS Traffic was routed over the common transport trunk group:

- May 12, 2004 letter from Joe Pitard (AT&T Settlements Manager) to Randall Bradley (Brandenburg Controller) notifying Brandenburg of the overpayment and attaching a spreadsheet detailing the overpayments for the previous 24 months along with the back-up ACS settlement statements to confirm payment of those amounts.
(See *Watts Rebuttal, Exhibit TW-2*)
- September 15, 2004 letter from Pitard to Bradley attaching a spreadsheet detailing 20 ACS calls made on June 7, 2004 and routed over the common transport trunk group. Bradley, in an October 18, 2004 letter to Pitard acknowledged and confirmed that the ACS calls identified in Pitard's letter "are examples of calls that typically would be placed on the intralata trunk group and billed by Brandenburg."
(See *Watts Rebuttal, Exhibits TW-3 and TW-4*)

¹⁵ Tr. at 60, lines 12-17.

¹⁶ Watts Direct at 7, lines 8-11. The usage charges for ACS Traffic were billed in arrears, so the April 2004 billing covered March 2004 usage.

¹⁷ A copy of the letter is attached as Exhibit TW-2 to Watts Rebuttal Testimony.

¹⁸ Because the usage charges for ACS Traffic were billed in arrears, the May 2004 payment would have been for the April 2004 bill for March 2004 usage. Hence, the claim period ends through March 2004 usage. AT&T Kentucky's Formal Complaint ("Complaint") at 3, n.1, and Exhibit 4, which itemizes the months and amounts being claimed.

¹⁹ Watts Direct at 8, lines 6-12.

- February 25, 2005 letter from William Schneider (AT&T Independent Company Relations) to Bradley communicating that AT&T's switch translations technicians examined the routing of AT&T Kentucky-originated EAS and ACS traffic to Brandenburg and confirmed via a Signaling System 7 (SS7) study of the traffic routed over the EAS trunks that AT&T Kentucky "has not, does not, and would not route ACS traffic to Brandenburg via the EAS trunk groups." Also attached were the settlement statements and proof of payment for each month of the two-year claim period.

(See *Watts Rebuttal, Exhibit TW-5*)

- April 6, 2005 email from Schneider to Bradley attaching a spreadsheet comparing several months of CABS billing from Brandenburg with AT&T Kentucky's records of minutes of use for ACS Traffic for the same months showing nearly identical minutes of use.

(See *Exhibit 3 to the Complaint*)

In spite of this information and in the absence of any information to the contrary, Brandenburg continued to refuse to reimburse AT&T Kentucky for the overpayments made for ACS Traffic because AT&T Kentucky could not provide the call detail records for the claim period. The total amount of overpayments for the relevant time period April 2002 through March 2004 is [REDACTED], plus [REDACTED] in interest²⁰ for a total of [REDACTED].²¹

CMRS TRAFFIC DISPUTE

AT&T Kentucky, Brandenburg and other independent rural local exchange carriers ("RLECs"), and the Commercial Mobile Radio Service ("CMRS") providers entered into the Kentucky CMRS transit traffic settlement agreement approved by this Commission on April 29, 2004 ("CMRS Agreement")²², in KPSC Case No. 2003-

²⁰ Interest is calculated through December 1, 2006, at the rate of .05 percent per day pursuant to the Agreement for the Provision of Telecommunications Services and Facilities, BI 3 Annex 1, IntraLata Switched Toll Services Annex, Section VIII, effective January 1, 1985, Exhibit 1 to the Complaint. After protracted negotiations failed to resolve the matter, AT&T Kentucky filed its Complaint on December 13, 2006, and is asking for the interest amount claimed in its Complaint, not to the date of payment by Brandenburg.

²¹ See Exhibit 4 to the Complaint.

²² See Exhibit 5 to the Complaint.

00045,²³ with an effective date of May 1, 2004, and a termination date of December 31, 2006.²⁴ Pursuant to the CMRS Agreement, AT&T Kentucky provided intermediary tandem switching and transport services to CMRS providers for the delivery of CMRS provider traffic to the RLECs' networks for termination.

In the CMRS Agreement, Brandenburg agreed, subject to the audit provisions, "to accept [AT&T Kentucky's] measurement of minutes of use and industry standard call detail records as the basis for the billing from and compensation to the Rural LECs for Covered CMRS Provider Traffic."²⁵ These records are referred to as "110101 format message and billing records" or EMI records.²⁶ Section 2.07 further required Brandenburg to "deduct the minutes of use for Covered CMRS Provider Traffic described in this Section from the total KRSP facility minutes of use which is billed to (or due through settlements), and due from, [AT&T Kentucky]."

From the time the CMRS Agreement became effective on May 1, 2004, through May 2005, the relevant claim period in this case, Brandenburg did not use AT&T Kentucky's EMI 110101 records as the basis of billing AT&T Kentucky and to deduct the appropriate minutes of use for Covered CMRS Provider Traffic.²⁷ Nor did Brandenburg request an audit pursuant to Section 2.07.²⁸

Brandenburg calculated the Covered CMRS Provider Traffic based on its own automatic message accounting (AMA) records and credited AT&T Kentucky with only those minutes of use derived from its own calculations rather than as indicated in AT&T

²³ *Petition of BellSouth Telecommunications, Inc., Seeking Resolution of Third Party Transit Traffic Issues*

²⁴ See CMRS Agreement, Sec. 3.01, Exhibit 5 to the Complaint. While the CMRS Agreement terminated December 31, 2006, it was in effect during the relevant claim period of May 1, 2004, through May 2005, and when AT&T Kentucky filed its complaint with the Commission on December 13, 2006.

²⁵ See *Id.*, Sec. 2.07 (emphasis added).

²⁶ See *Id.*, Sec. 1.05; Tr. at 24, lines 5-9; Tr. at 76, lines 10-16.

²⁷ Watts Direct at 14, lines 5-8, 18-23; Willoughby Cross, Tr. at 125, lines 12-17.

²⁸ Direct Testimony of Scott McPhee ("McPhee Direct") at 6, lines 1-3.

Kentucky's EMI 110101 records.²⁹ This caused AT&T Kentucky to be under credited for Covered CMRS Provider Traffic and in effect overbilled.³⁰ AT&T Kentucky paid Brandenburg based on those invoices through the May 2005 usage month. When the Parties were unsuccessful in resolving the discrepancies between AT&T Kentucky's EMI records and what Brandenburg was deducting in its bills to AT&T Kentucky for Covered CMRS Provider Traffic, AT&T Kentucky "stopped the bleeding" and began paying Brandenburg based upon AT&T Kentucky's measurement of minutes of use of Covered CMRS Provider Traffic as indicated in its EMI records.³¹

Prior to withholding payment, AT&T Kentucky overpaid Brandenburg for Covered CMRS Provider Traffic from May 1, 2004, through May 2005, and is requesting reimbursement in the amount of [REDACTED], plus interest in the amount of [REDACTED] calculated at the rate of 1½% per month from the date of the overpayments beginning June 1, 2004, until December 1, 2006, the end date for which AT&T Kentucky is requesting interest, for a total of [REDACTED].³²

ARGUMENT

ACS TRAFFIC DISPUTE

1. AT&T Kentucky's Call Detail Records Are not Necessary to Prove that ACS Traffic Was Routed over the Common Transport Trunk Group During All Times Relevant to this Complaint.

There is no dispute that AT&T Kentucky paid Brandenburg for ACS Traffic through the ACS Settlements System as part of the overall Settlements Process from at

²⁹ Watts Direct at 14, lines 18-23; Willoughby Cross, Tr. at 125, lines 3-5, 12-17.

³⁰ Tr. at 87, lines 10-15.

³¹ Tr. at 87, lines 6-9.

³² See Exhibit 6 to the Complaint (Brandenburg MPB CMRS Dispute Interest Calculations as of December 2006).

least 1997 through March 2004.³³ When AT&T Kentucky discovered the error, it stopped paying for ACS Traffic through the Settlements Process beginning in May 2004.³⁴ Brandenburg's behavior both when AT&T Kentucky began making the ACS payments and when AT&T Kentucky stopped making the ACS payments is quite telling.

First, when AT&T Kentucky began making the payments in 1997, Brandenburg inquired as to why AT&T Kentucky was making those payments.³⁵ If Brandenburg did not think it was already being compensated for that traffic through CABS billing it would have had no reason to make the inquiry.³⁶ Second, when AT&T Kentucky ceased making payments through the Settlements Process, Brandenburg did not challenge it.³⁷ If Brandenburg believed it was not being paid through CABS billing for this same traffic, it is doubtful that Brandenburg would not have challenged AT&T Kentucky ceasing those payments.³⁸

While Brandenburg admits that during this same time period it billed AT&T Kentucky through its CABS billing process for all traffic that was terminated over the common transport trunk group,³⁹ and does not dispute that AT&T Kentucky paid Brandenburg's CABS bills during the same time period, Brandenburg has refused to reimburse AT&T Kentucky for the overpayment because AT&T Kentucky could not produce the call detail records for the relevant time period proving that the ACS Traffic

³³ Watts Direct at 5, lines 10-12; Willoughby Direct at 6, lines 9-11, 19-24. See also Brandenburg Motion for Partial Summary Judgment, p. 3.

³⁴ Watts Direct at 7, lines 14-19; Willoughby Direct at 6, lines 22-24.

³⁵ Willoughby Direct at 6, lines 9-13.

³⁶ Ms. Willoughby's explanation for not following up on a voice mail allegedly left for an AT&T Kentucky employee to inquire about the first ACS Settlement payment was that they spoke with another carrier who assured Brandenburg that "*even though we were sending them a CABS bill, we were entitled to this ACS settlement.*" Tr. at 122, lines 8-10 (emphasis added). In addition to this being hearsay, information received from one carrier is hardly a basis for reaching a conclusion on an issue with another carrier.

³⁷ Watts Direct at 8, lines 6-8; Willoughby Rebuttal at 6-7, lines 18-24, 1-10.

³⁸ Tr. at 8, lines 8-12.

³⁹ Tr. at 121, lines 21-23.

was routed over the common transport trunk group.⁴⁰ *By Brandenburg's own admission, if the ACS Traffic were routed over the common transport trunk group, then it was billed for through CABS.*⁴¹

While the call detail records would have, in retrospect, been nice to have, they are not necessary to prove that AT&T Kentucky routed ACS Traffic over the common transport trunk group during the times relevant to this case.⁴² Brandenburg claimed in its initial pleadings in the case that AT&T intentionally destroyed these records, but that is not the case. In fact, AT&T Kentucky did not retain the call detail records because it did not anticipate that Brandenburg would question whether ACS Traffic was routed over the common transport trunk group and that Brandenburg would want those records to prove it.⁴³ By the time AT&T learned of this in Brandenburg's June 1, 2004 letter responding to AT&T Kentucky's initial request for reimbursement, call detail records were no longer available for any of the relevant time period (April 2002 through March 2004) because they had automatically rolled off the system and could not be retrieved.⁴⁴

In its June 1, 2004 response, while acknowledging that Brandenburg bills AT&T Kentucky for all minutes of use terminated to Brandenburg on the common transport

⁴⁰ Watts Direct at 9, lines 10-14.

⁴¹ Willoughby Direct at 4, lines 16-18 ("If, however, [AT&T Kentucky] were to deliver that traffic over the BTG [common transport trunk group], then [AT&T Kentucky] would be billed by Brandenburg Telephone as part of its Carrier Access Billing System ('CABS')."); Watts Rebuttal at 4-5, lines 10-22, 1-2.

⁴² Even if AT&T Kentucky had retained call detail records for the days it had them when it discovered the error, all indications are that it would not have completely resolved this issue because Brandenburg would not have accepted them for the time period that AT&T Kentucky did not have the records. Tr. at 93-94, lines 19-25, 1-13.

⁴³ Tr. at 77, lines 7-17.

⁴⁴ Watts Rebuttal at 3, lines 20-22. Due to the sheer volume, call detail records automatically roll off AT&T's system every 60 days one day at a time-- a day comes in and a day rolls off. Tr. at 46, lines 19-20; Tr. at 48, lines 12-13. The call detail records for the last day in March 2004 would have rolled off the system May 30, 2004.

trunk group, Brandenburg took the position that it did not know over what trunk groups the ACS calls were being sent.⁴⁵

Although AT&T Kentucky did not have the call detail records for the specific claim period, it did provide Brandenburg evidence that ACS calls made on June 7, 2004, just six days after the date of Brandenburg's letter raising the issue, were routed to Brandenburg over the common transport trunk group.⁴⁶ Brandenburg acknowledged that "these calls are examples of calls that typically would be placed on the intralata trunk group and billed by Brandenburg."⁴⁷ Yet, Brandenburg refused to accept that ACS Traffic was being routed over the common transport trunk group during the claim period because it did not know "whether these are the same calls that [AT&T Kentucky] is claiming as the calls that were double paid..."⁴⁸

This position rings hollow especially in light of the fact that ACS calls had always been routed over the common transport trunk group⁴⁹ and, in the words of Ms. Willoughby, Brandenburg's Assistant General Manager, Brandenburg does "recordings on most of what's on those [common transport] trunk groups" for CABS billing⁵⁰ and, keeps its call detail records "longer than 60 days . . . we probably keep them for a couple of years."⁵¹ These records are what Brandenburg uses to generate its CABS billing.⁵² Yet, oddly Brandenburg never provided any records or documentation to refute the overwhelming preponderance of the evidence that ACS Traffic was being routed from AT&T Kentucky to Brandenburg over the common transport trunk group.

⁴⁵ See Letter from Bradley to Pitard attached as Exhibit TW-1 to Watts Rebuttal Testimony.

⁴⁶ Watts Rebuttal, Exhibit TW-3 (Letter dated September 15, 2004, from Pitard to Bradley).

⁴⁷ Watts Rebuttal, Exhibit TW-4 (Letter dated October 18, 2004 from Bradley to Pitard).

⁴⁸ *Id.*

⁴⁹ Neinast Direct at 6, lines 1-2; Tr. at 93, lines 9-13.

⁵⁰ Tr. at 121, lines 15-16.

⁵¹ Tr. at 126, lines 5-6.

⁵² Tr. at 125-126, lines 24-25, 1-2.

2. The Uncontroverted Evidence in This Case Establishes that ACS Traffic Was Routed over the Common Transport Trunk Group During All Times Relevant to the ACS Traffic Dispute.

There are three trunk groups between AT&T Kentucky and Brandenburg over which the companies exchange traffic: (1) a common transport trunk group which is a “catch-all type trunk group” that handles “all toll traffic, any of the CMRS traffic, any IXC carrier traffic,”⁵³ and (2) two local or EAS trunk groups for local 7-digit calls as set forth in applicable tariffs.⁵⁴ Traffic over the local or EAS trunk groups is not measured and is handled on a bill and keep basis.⁵⁵ Calls made over the common transport trunk group are measured because they are billed calls.⁵⁶

The local or EAS trunk group handles the local calls between exchanges (cities) of AT&T Kentucky and Brandenburg where local calling is available.⁵⁷ All other calls between the two companies are toll or ACS Traffic and are routed over the common transport trunk group.⁵⁸ The Rose Terrace local or EAS trunk group has a “very small remote switch that doesn’t have the capability to handle all of the traffic types that are associated with the common transport trunk group.”⁵⁹ The other local or EAS trunk group is in Owensboro which “is a switch in a different LATA than the Louisville LATA. So AT&T Kentucky would have to haul the traffic across the LATA to get it to the Owensboro LATA, which . . . is not a legal process for an RBOC to do that, and then we would have to send it over that group, which we wouldn’t do, whereas the Louisville tandem is specifically designed for all those common types of traffic, and the trunk

⁵³ Tr. at 101, lines 18-24

⁵⁴ Tr. at 100, lines 11-13, 16-21.

⁵⁵ Tr. at 101, lines 2-7.

⁵⁶ Tr. at 102, lines 1-2.

⁵⁷ Neinast Direct at 4, lines 4-7; *see also*, MN Exhibit 1 to Neinast Direct.

⁵⁸ Neinast Direct at 4, lines 7-9.

⁵⁹ Tr. at 99, lines 10-14.

group itself is designed for all those.”⁶⁰ As Mr. Neinast testified, to route traffic other than local traffic over local trunk groups would be like using a dirt or gravel road versus an interstate highway.⁶¹ It would not make sense.

As acknowledged by Brandenburg, the common transport trunk group was “designed and built specifically for ... intralata toll traffic.”⁶² As further testified to by Mr. Neinast, ACS Traffic was designed to go over the common transport trunk group.⁶³ Just as Brandenburg “has not changed anything on the intralata trunk group and has continued billing [AT&T Kentucky] exactly as the original agreement had envisioned,”⁶⁴ neither has AT&T Kentucky changed the routing of ACS Traffic since its initial design.⁶⁵ ACS Traffic is dialed on a 10-digit basis that “still looks like a toll call because it’s still an interexchange call. It’s just, retailwise, it’s being billed as a flat rate.”⁶⁶ “Since the ACS traffic type is typically considered as a toll with a ... retail offering ... then that proves ... without a doubt that that traffic was going over the common transport trunk group and the part of that settlement process.”⁶⁷

ACS Traffic has always been routed over the common transport trunk group,⁶⁸ and there have been no changes to that routing since at least 1999, when AT&T Kentucky witness Mark Neinast was able to confirm through a new operations support system that ACS Traffic was being routed over the common transport trunk group.⁶⁹ Brandenburg did not dispute this evidence and provided no evidence to the contrary, in

⁶⁰ Tr. at 99, lines 16-24.

⁶¹ Tr. at 99-100, lines 25, 1-2.

⁶² See Watts Rebuttal, Exhibit TW-4 (Letter dated October 18, 2004 from Bradley to Pitard)

⁶³ Tr. at 104, lines 8-11.

⁶⁴ See Exhibit TW-4, Watts Rebuttal (Letter dated October 18, 2004 from Bradley to Pitard)

⁶⁵ Tr. at 104, lines 8-16; Neinast Direct at 4, lines 16-19.

⁶⁶ Tr. at 103, lines 12-15.

⁶⁷ Tr. at 105-106, lines 25, 1-5.

⁶⁸ Neinast Direct at 4, lines 14-16; p. 6, lines 1-2.

⁶⁹ Neinast Rebuttal at 3, lines 9-11.

spite of Ms. Willoughby's testimony that inferred that Brandenburg has the "ability to look and see what's coming over [the common transport] trunk group for CABS billing."⁷⁰

Brandenburg's claim in its June 1, 2004 letter that AT&T Kentucky "could at their discretion change this routing without Brandenburg's knowledge"⁷¹ ignores two uncontroverted facts: (1) that if AT&T Kentucky had tried to arbitrarily change the routing of the ACS Traffic without coordinating such a change with Brandenburg, there could have been blocked calls or service outages in the communities,⁷² and (2) the only record of any activity associated with the common transport trunk group between Brandenburg and AT&T Kentucky since 1999 (when a new operations support system was put into place) was an add order for a new NPA-NXX code in the year 2000.⁷³

Equally as absurd is Brandenburg's confirmation on the one hand that ACS Traffic was being routed over the common transport trunk group as of June 7, 2004, yet still refusing to reimburse AT&T Kentucky for the previous two years of overpayment for such traffic, stating that it does not know whether the calls from June 2004 were the *same calls* as those that AT&T Kentucky is claiming were double paid and that Brandenburg does not know if AT&T Kentucky had delivered some of the ACS calls over the EAS trunks.⁷⁴ To suggest that AT&T Kentucky can route some ACS calls over the local or EAS trunks and other ACS calls over the common transport trunk group demonstrates either a lack of understanding of what is involved in routing traffic or is

⁷⁰ Tr. at 121, lines 9-16, Willoughby Cross (Q. ... I believe in your testimony you stated that Brandenburg doesn't have the ability to look and see what's coming over that trunk group for CABS billing; is that correct or is [sic] not? A. No, that is not accurate. ... We do recordings on most of what's on those trunk groups...")

⁷¹ See Watts Rebuttal, Exhibit TW-1 (Letter dated June 1, 2004 from Bradley to Pitard).

⁷² Neinast Rebuttal at 3, lines 15-17

⁷³ Tr. at 104, lines 12-16.

⁷⁴ See Watts Rebuttal, Exhibit TW-1 (Letter dated October 18, 2004 from Bradley to Pitard)

simply a confusion strategy to imply that AT&T Kentucky would purposefully misroute ACS traffic. This is an unreasonable position of Brandenburg's to support its refusal to reimburse AT&T Kentucky for the overpayments.

The uncontroverted evidence presented in this case shows that (1) the ACS Traffic was routed over the common transport trunk group before, during and after the relevant claim period; (2) AT&T Kentucky made no changes in the routing of ACS Traffic to any other trunk groups, including EAS trunk groups, which is confirmed by records going back to at least 1999, three years prior to the beginning of the relevant claim period; (3) Brandenburg billed AT&T Kentucky for traffic terminated to it over the common transport trunk group through CABS billing; (4) AT&T Kentucky therefore paid for ACS Traffic through the CABS billing from Brandenburg; (5) AT&T Kentucky paid for ACS Traffic through the Settlements Process; (6) when AT&T Kentucky made its first payment for ACS Settlement, Brandenburg questioned whether AT&T Kentucky should be paying for the ACS Traffic under the Settlements Process because it was billing CABS⁷⁵ and (6) Brandenburg never challenged AT&T Kentucky when it notified Brandenburg of the overpayments in 2004 and stopped compensating Brandenburg for ACS Traffic in the Settlements Process from that point going forward.

There is no evidence to support that AT&T Kentucky routed its ACS Traffic over local or any trunk group other than the common transport trunk group. Tim Watts, AT&T's Lead Analyst, summed it up when he said, "I don't know how to get around it. We paid them twice for the same traffic."⁷⁶ AT&T Kentucky is therefore entitled to reimbursement for the overpayment, plus interest.

⁷⁵ Willoughby Cross, Tr. at 131, lines 16-17.

⁷⁶ Tr. at 91, lines 10-11.

3. AT&T Kentucky's Error in Making the Overpayment Does not Preclude Its Recovery of such Overpayment.

Brandenburg appears to argue that since AT&T Kentucky made an error in making the overpayments that AT&T Kentucky should not be reimbursed.⁷⁷ AT&T Kentucky does not dispute that it made an error in paying Brandenburg twice for the same ACS Traffic, and in not detecting the error until 2004, approximately six years⁷⁸ after the commencement of the overpayments to Brandenburg for this traffic. This error, however, does not entitle Brandenburg to keep such overpayments. AT&T Kentucky is not seeking to avoid a payment obligation or reap a windfall, but is merely seeking reimbursement for the double payments it made to Brandenburg for the ACS Traffic during the two-year period prior to the discovery of the error.

In fact, it is Brandenburg that has reaped a windfall since AT&T Kentucky is requesting reimbursement only for the overpayments made to Brandenburg for ACS Traffic from April 2002 through March 2004, and not the entire period of overpayment.

4. AT&T Kentucky Is Entitled to Interest.

The ACS Settlement was paid by AT&T Kentucky as a part of the overall Settlement Process set forth in the Agreement for the Provision of Telecommunications Services and Facilities between AT&T Kentucky and Brandenburg.⁷⁹ AT&T Kentucky's claim for interest in the amount of .05 percent per day is based on Section VIII of Annex

⁷⁷ Willoughby Direct at 10, lines 10-18.

⁷⁸ AT&T Kentucky indicated in its Complaint that Brandenburg began CABS billing in or around 1998. Brandenburg alleges it was in 1995. Assuming Brandenburg is correct, and assuming Brandenburg first received payment for ACS Traffic from AT&T Kentucky in December 1997, as it stated in its Answer, AT&T Kentucky would have still made overpayments for the ACS Traffic going back several years. Furthermore, this date is not relevant to the outcome of this case since AT&T Kentucky is only seeking reimbursement of its overpayments made in the two-year period prior to AT&T Kentucky discovering the error in 2004.

⁷⁹ Watts Direct at 3, lines 1-4.

1 (IntraLATA Switched Toll Services Annex), Attachment BI 3 to that Agreement.⁸⁰

Section VIII provides, "If a dispute is substantiated in favor of the exchange carrier, the fund will return the disputed amount plus interest (.05 percent per day)." AT&T Kentucky is requesting interest only until December 1, 2006, just before it filed its complaint on December 13, 2006, and is entitled to such interest.

5. AT&T Kentucky's Claim Is Not Time Barred.

Brandenburg's affirmative defenses that AT&T Kentucky's claims are barred by the doctrine of laches, the statute of limitations, Kentucky Administrative Regulations, or otherwise time barred are without merit. AT&T Kentucky notified Brandenburg immediately in 2004 once it became aware of the error and requested reimbursement for the overpayments going back only two years from that date. The Kentucky statute of limitations on claims such as this that arise under a written contract is 10 years. KRS 413.090(2). Section XI of the written Agreement for the Provision of Telecommunications Services and Facilities, see Formal Complaint, Exh. 1, under which this claim is made, states that "[n]o claims or adjustments of such charges, or any other claims with respect to this Agreement may be made more than two years after the date of the event that gave rise to the claim, except where such limitations are *contrary to law;...*" (Emphasis added.) Such a two-year limit is in fact contrary to the 10-year statute of limitations for such claims in Kentucky. Although AT&T Kentucky could have asked for reimbursement going back the full six years that it overpaid Brandenburg, it has not done so and is not going to now. AT&T Kentucky has limited its claim to the two years provided for in Section XI of the Agreement and has acted in good faith in

⁸⁰ Tr. at 87-88, lines 20-25, 1-25.

trying to reach resolution with Brandenburg on this issue without having to involve the Commission, but has been unsuccessful.

CMRS DISPUTE

1. Brandenburg Failed to Abide by the CMRS Agreement and Use AT&T Kentucky's Records as the Basis for Billing, Resulting in AT&T Kentucky Overcompensating Brandenburg for Covered CMRS Provider Traffic.

Section 2.07 of the CMRS Agreement required Brandenburg, subject to audit, to “accept [AT&T Kentucky’s] measurement of minutes of use and industry standard call detail records as the basis for the billing from and compensation to the Rural LECS for Covered CMRS Provider Traffic” and to “deduct the minutes of use for Covered CMRS Provider Traffic described in [] Section [2.07] from the total KRSP facility minutes of use which is billed (or due through settlements), and due from, [AT&T Kentucky]” as agreed to by the Parties.

Brandenburg’s Assistant General Manager, Allison Willoughby, agreed on behalf of Brandenburg when she signed the CMRS Agreement that Brandenburg would use AT&T Kentucky’s EMI 110101 records for billing and compensation purposes and for deducting Covered CMRS Provider Traffic. Yet, from the time the CMRS Agreement became effective May 1, 2004, through May 2005, Brandenburg admittedly used its own records, rather than AT&T Kentucky’s records, as the basis of billing and to deduct the minutes of use for Covered CMRS Provider Traffic.⁸¹ If Brandenburg disputed the accuracy of AT&T Kentucky’s records, it could have and should have requested an

⁸¹ Willoughby Cross, Tr. at 125, lines 15-17 (“So our AMA records are actually our basis for billing [AT&T Kentucky] initially”); see also Willoughby Direct at 18, lines 9-12 (“After reconciling the records supplied by [AT&T Kentucky] with its own AMA records, Brandenburg Telephone billed [AT&T Kentucky] according to its verified numbers”).

audit as provided for in Section 2.07, but it did not.⁸² Instead, Brandenburg used a flawed and inaccurate internal process by “verifying” AT&T Kentucky’s records with its own AMA records for billing purposes and for deducting minutes of use for Covered CMRS Provider Traffic.⁸³ Such actions on the part of Brandenburg constituted a violation of the CMRS Agreement resulting in overpayment by AT&T Kentucky for Covered CMRS Provider Traffic.

Ms. Willoughby insinuates that AT&T Kentucky’s position is that Brandenburg must use the call detail records, even when there are known errors.⁸⁴ On the contrary, in an effort to resolve this issue, AT&T Kentucky agreed to review Brandenburg’s records and methodology to try to determine where the discrepancies were and went to great lengths to explain to Brandenburg why the ‘errors’ Brandenburg had identified were not errors at all. AT&T Kentucky’s detailed analysis of Brandenburg’s call data and internal “verification” process explained these multiple errors in Brandenburg’s records, not in AT&T Kentucky’s EMI records, that accounted for the differences between AT&T Kentucky’s records and Brandenburg’s records.⁸⁵ AT&T Kentucky provided this information to Brandenburg on October 12, 2005, outlining in detail how Brandenburg’s process resulted in inaccurate crediting and billing to AT&T Kentucky for Covered CMRS Provider Traffic.⁸⁶ Brandenburg’s process did not accurately consider

⁸² It is important to note that Brandenburg provided no evidence of any inaccuracies in AT&T Kentucky’s records and provided no evidence refuting the errors that AT&T Kentucky identified in Brandenburg’s internal process that caused the overpayments during the claim period.

⁸³ Tr. at 37, 38, lines 24-25, 1-3.

⁸⁴ Willoughby Direct at 11-12, lines 23-24, 1-2; Willoughby Rebuttal at 9, lines 8-16; Tr. at 126-127, lines 20-25, 1-5.

⁸⁵ See Exhibit 7 to the Complaint (Email dated October 15, 2005 from Schneider to Bradley). Attachment 2 is a 570-page spreadsheet and was not attached, but has always been available for review upon request. See *also* Tr. at 70-74 and AT&T Kentucky Hearing Exhibit 1.

⁸⁶ *Id.*

wireless traffic routing, number portability, number pooling, cellular roaming, Type 1 trunking, and multiple OCNs for the same provider, or a combination of these.⁸⁷

Mr. Watts explained several of these errors on cross examination by Commission Staff Attorney Pinney. For example, he described that Brandenburg had not looked at number pooling and as a result it incorrectly identified the originating carrier who “was a signatory CMRS carrier that actually had the number through number pooling, but the carrier owning the NPA-NXX was a different carrier.”⁸⁸ Another example was local number portability, where Brandenburg “failed to ... account for that number being ported from one carrier to another carrier and it had been ported to another signatory CMRS carrier that, in fact, had ... been ported and therefore was a valid signatory CMRS carrier.”⁸⁹ Mr. Watts further explained that compensation is determined by how the call is delivered to the AT&T Kentucky network because it is the carrier that delivers the call to AT&T Kentucky that AT&T Kentucky holds responsible. AT&T Kentucky’s EMI records identify the carrier name by OCN code of the wireless carrier that brought the call into the AT&T Kentucky network. Brandenburg’s AMA records cannot do that and that is why the parties use AT&T Kentucky’s EMI records.⁹⁰

While Brandenburg admittedly made subsequent changes to its process to correct these errors *going forward*,⁹¹ Brandenburg continued to refuse to reimburse AT&T Kentucky for the full amount of the overpayments made by AT&T Kentucky from May 2004 through May 2005 due to Brandenburg’s incorrect billing for the Covered

⁸⁷ *Id.* See also Watts Direct at 15, lines 10-13; Watts Rebuttal at 9-11; Watts Cross, Tr. at 70-74.

⁸⁸ Tr. at 71, lines 13-17.

⁸⁹ Tr. at 72, lines 9-14.

⁹⁰ Tr. at 73.

⁹¹ Willoughby Rebuttal at 12, lines 10-12 (“... Brandenburg has since corrected whatever issues [AT&T Kentucky] identified.”)

CMRS Provider Traffic.⁹² It is for these overpayments that the Commission should rule AT&T Kentucky is entitled to reimbursement, plus interest.

2. AT&T Kentucky Is Entitled to Interest on the CMRS Traffic Overpayments.

AT&T Kentucky's CMRS Traffic claim arises from a violation of the CMRS Agreement by Brandenburg. Pursuant to Section 2.07 of the CMRS Agreement, Brandenburg was required to use AT&T Kentucky's EMI 110101 records as the "basis for the billing from and compensation to the Rural LECs for Covered CMRS Provider Traffic as set forth in this Section." Brandenburg was to deduct minutes of use for Covered CMRS Provider Traffic from the total minutes of use billed to and due from AT&T Kentucky. Brandenburg did not do this, but instead used its own inaccurate records, causing AT&T Kentucky to improperly pay Brandenburg for Covered CMRS Provider Traffic that should not have been included in AT&T Kentucky's bills from May 2004 through May 2005. After AT&T Kentucky identified the various errors in Brandenburg's internal process, not in the AT&T Kentucky EMI 110101 records, Brandenburg continued to refuse to reimburse AT&T Kentucky for the overpayments. AT&T Kentucky is entitled to interest pursuant to Section 2.12 of the CMRS Agreement.

Section 2.12 of the CMRS Agreement provides for interest at the rate of 1 ½ % per month to be applied in part to *undisputed* charges not timely paid by AT&T Kentucky to the RLECs or by a Signatory CMRS Provider to AT&T Kentucky. It also provides, "The *Parties* agree that interest shall accrue and be paid on *all overdue disputed amounts that are resolved in favor of the non-disputing party.*" Sec. 2.07 (emphases added). AT&T Kentucky, Signatory CMRS Providers, and the Rural LECs listed in

⁹² Tr. at 76, lines 4-7.

Exhibit B to the CMRS Agreement are collectively referred to as the "Parties."⁹³ Ms. Willoughby signed the CMRS Agreement on behalf of Brandenburg, which is listed in Exhibit B and is, therefore, a Party. Both AT&T Kentucky and Brandenburg are Parties covered by this provision. In the situation before the Commission, Brandenburg is the disputing party that is disputing it owes AT&T Kentucky the overpayments being requested. The reimbursement of these overpayments was due to AT&T Kentucky upon its notification to Brandenburg. To the extent the "overdue disputed amount" from Brandenburg for AT&T Kentucky's overpayments is resolved in favor of AT&T Kentucky, AT&T Kentucky is entitled to interest at the rate set forth in the Agreement.

Brandenburg's insinuation that this section does not apply to this dispute is disingenuous and without merit. As a Party to the Agreement and as the disputing party in this case, that section clearly applies and Brandenburg should be held to it due to its intentional violation of the CMRS Agreement from the time the CMRS Agreement became effective May 1, 2004.

3. Brandenburg Must Use AT&T Kentucky's Records Going Forward.

The CMRS Agreement was entered into between AT&T Kentucky, certain signatory CMRS Providers, and RLECs, such as Brandenburg, and filed with this Commission as a settlement of such issues in Docket No. 2003-00045. Pursuant to the agreement, AT&T Kentucky provided intermediary tandem switching and transport functions for the delivery of traffic originated by a CMRS Provider to an RLEC for termination on the RLEC's network.⁹⁴

⁹³ CMRS Agreement, p. 1.

⁹⁴ CMRS Agreement, Sec. 1.03.

The CMRS Agreement by its terms terminated December 31, 2006.⁹⁵ To the extent Signatory CMRS providers wanted to continue to route CMRS Provider Traffic through AT&T Kentucky to RLECs' networks, they were to initiate interconnection negotiations with the RLECs no later than January 1, 2006.⁹⁶ Such negotiations took place resulting in arbitration before this Commission and several subsequent orders, all of which required the parties to file interconnection agreements to be effective January, 1, 2007.⁹⁷ Those interconnection agreements are to be filed in the upcoming weeks.

In its Order dated November 9, 2007, in the CMRS/RLEC Arbitration, the Commission addressed the parties' disputes over relevant contract language.⁹⁸ Before the Commission for consideration was the RLECs' desire that the "use of a third-party carrier [such as AT&T Kentucky] by the CMRS Provider be expressly conditioned upon the CMRS Provider ensuring that the third-party carrier delivers the CMRS Provider's traffic to the local exchange carrier . . . at no charge to the LEC and in a manner that includes complete and accurate industry standard call detail records."⁹⁹ The Commission held that because the CMRS Providers were not in a position to ensure appropriateness of the transit provider's records, "the RLECs [such as Brandenburg] are to *continue to rely on the EMI 11-01-01 records that they currently use.*"¹⁰⁰ (emphasis added). These are the same industry standard call detail records that AT&T Kentucky provided to Brandenburg and that Brandenburg agreed to accept for Covered CMRS Provider Traffic identifying the original CMRS Provider and the minutes of use for each

⁹⁵ *Id.*, Sec. 3.01.

⁹⁶ *Id.*

⁹⁷ CMRS/RLEC Arbitration November 9, 2007 Order.

⁹⁸ *Id.*

⁹⁹ *Id.* at 6-7.

¹⁰⁰ *Id.* at 7.

such provider.¹⁰¹ Therefore, based on this Commission's own order, Brandenburg must continue to use AT&T Kentucky's EMI 110101 records for identifying Covered CMRS Provider Traffic.

Conclusion

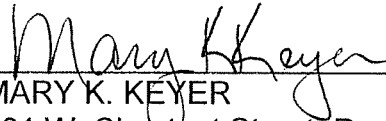
AT&T Kentucky and the independent telephone companies (one of which is Brandenburg) have a long-standing relationship of working together to resolve their differences or disputes. It has been common practice in these relationships to bring forward to each other errors that have occurred and to get them corrected in a timely and fair manner. It is unfortunate that the parties were not able to continue that practice in getting these disputes resolved prior to bringing this complaint before the Commission. AT&T Kentucky took all reasonable steps it could to provide Brandenburg with conclusive information to substantiate its claims of overpayment for both ACS Traffic and CMRS Traffic, and believes the evidence in the case further substantiates these claims.

For all the reasons stated herein, the Commission should order Brandenburg to (1) reimburse AT&T Kentucky for the overpayments for terminating ACS Traffic in the amount of [REDACTED], plus interest in the amount of [REDACTED], for a total of [REDACTED]; (2) to reimburse AT&T Kentucky for the overpayments for the Covered CMRS Provider Traffic made by AT&T Kentucky to Brandenburg in the amount of [REDACTED], plus interest in the amount of [REDACTED], for a total of [REDACTED]; and (3) to abide by this Commission's order issued on November 9, 2007, in the CMRS/RLEC Arbitration and use AT&T Kentucky's measurement of minutes of use and

¹⁰¹ See CMRS Agreement, Sec. 2.10 (such records are "currently known as '110101 format message and billing records'"); see also Tr. at 24, lines 8-9.

industry standard call detail records as the basis for the billing from and compensation to Brandenburg for Covered CMRS Provider Traffic.

Respectfully submitted,



MARY K. KEYER
601 W. Chestnut Street, Room 407
Louisville, KY 40203
(502) 582-8219
mary.keyer@att.com

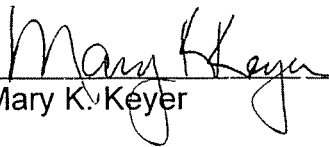
COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.
D/B/A AT&T KENTUCKY

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CERTIFICATE OF SERVICE -- KPSC 2006-00546

It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by placing same in the U.S. Mail, postage pre-paid, this 15th day of October, 2009.

John E. Selent
Holly C. Wallace
Dinsmore & Shohl, LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202
John.Selent@dinslaw.com
Holly.Wallace@dinslaw.com



Mary K. Keyer