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March 5, 2010

VIA COURIER

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

RECEIVED

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PUBLIC SERVICE
COMMISSION


Re: Petition for Arbitration of Interconnection Agreement Between BellSouth
Telecommunications, Inc. d/b/a AT&T Kentucky and Sprint
Communications Company, L.P.
KPSC 2010-00062

Dear Mr. Derouen:

Enclosed for filing in the above-captioned case are the original and ten (10)
copies of Notice of Change in Law Affecting Arbitration Issues.

Should you have any questions, please let me know.

Sincerely,


for Mary K. Keyer

Enclosures

cc: Parties of Record

789135

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF)
)
PETITION FOR ARBITRATION OF)
INTERCONNECTION AGREEMENT BETWEEN) CASE NO. 2010-00062
BELLSOUTH TELECOMMUNICATIONS, INC.)
D/B/A AT&T KENTUCKY AND SPRINT)
COMMUNICATIONS COMPANY, L.P.)

NOTICE OF CHANGE IN LAW AFFECTING ARBITRATION ISSUES

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (“AT&T Kentucky”) respectfully informs the Commission of a recent decision by the United States Court of Appeals for the Sixth Circuit in light of which AT&T Kentucky intends to modify its position on certain contract language in the proposed interconnection agreement that is the subject of this proceeding. AT&T Kentucky brings this recent development in the law to the Commission’s attention now to ensure that AT&T Kentucky’s later advocacy of its position, as modified, does not unfairly surprise Sprint Communications Company, L.P. (“Sprint CLEC”) or the Commission. AT&T Kentucky further states as follows:

1. AT&T Kentucky filed its Petition for Arbitration (“Petition”) in this matter on February 12, 2010. Exhibit B to the Petition was the proposed interconnection agreement reflecting the parties’ disagreements as they stood as of that date. Exhibit C to the Petition was an issues matrix or Decision Point List (“DPL”) that identified the issues set forth for arbitration, including, for each issue, the disputed contract language, AT&T Kentucky’s position on the issue, and Sprint CLEC’s position as AT&T Kentucky understood it.

2. As of the filing of the Petition, two federal courts of appeals, the Seventh Circuit and the Eighth Circuit, had addressed the question whether incumbent local exchange carriers (here, AT&T Kentucky) must provide entrance facilities to CLECs at cost-based rates, and both courts had answered that question in the affirmative. No federal court in Kentucky had addressed the question, and neither had the United States Supreme Court. Thus, the prevailing view on this question in the federal courts of appeal, as of the date on which the Petition was filed, was that entrance facilities were required to be provided by incumbent LECs to CLECs at cost-based rates.

3. Consistent with the prevailing view of the law as reflected in the decisions of the Seventh and Eighth Circuits, the proposed interconnection agreement and DPL that AT&T Kentucky filed as exhibits to its petition included language requiring AT&T Kentucky to provide Sprint CLEC with entrance facilities at cost-based rates.

4. Eleven days after the Petition was filed, however, the United States Court of Appeals for the Sixth Circuit held that incumbent local exchange carriers are *not* required to provide entrance facilities to CLECs at cost-based rates. *Michigan Bell Tel. Co. v. Covad Commc'ns Co.*, Case No. 07-0260 (6th Cir. Feb. 23, 2010). In light of the *Michigan Bell* decision, which is controlling in Kentucky, AT&T Kentucky cannot now lawfully be required to provide entrance facilities to Sprint CLEC at cost-based rates.

5. Accordingly, AT&T Kentucky will advocate in this proceeding the position that any entrance facilities that Sprint CLEC obtains from AT&T

Kentucky will be subject to AT&T Kentucky's tariffed rates for such facilities, rather than cost-based rates. In addition, AT&T Kentucky will provide Sprint and the Commission with modified contract language and DPL entries reflecting that position.

6. AT&T Kentucky does not anticipate that Sprint will object to AT&T Kentucky's advocacy of a position that reflects Sixth Circuit law as announced after the filing of the Petition. AT&T Kentucky notes, however, that if the Commission were to approve an interconnection agreement that included pre-*Michigan Bell* language governing entrance facilities, that language would be subject to immediate change pursuant to agreed "change of law" language in the parties' agreement.

Respectfully submitted this 5th day of March, 2010.

for 

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AT&T KENTUCKY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof via U.S. Mail, this 5th day of March 2010.

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Cheryl R. Wynn
for _____
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