at&t

Mary K. Keyer
General Attorney
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

June 2, 2010



**VIA COURIER**

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

Re: Petition of Cricket Communications, Inc. for Arbitration of Rates, Terms and Conditions of Interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky
PSC 2010-00131

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case are the original and five (5) copies of AT&T Kentucky's Reply Brief on Threshold Issues.

If you have any questions, please let me know.

Sincerely,

Mary K. Keyer

Mary K. Keyer

Enclosures

cc: Parties of Record

818157

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

| | | |
|---|---|---|
| IN THE MATTER OF PETITION OF CRICKET COMMUNICATIONS, INC. FOR ARBITRATION OF RATES, TERMS AND CONDITIONS OF INTERCONNECTION WITH BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T KENTUCKY | ) ) ) ) ) ) | Case No. 2010-00131 |

## AT&T KENTUCKY'S REPLY BRIEF ON THRESHOLD ISSUES

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky") respectfully submits its Reply Brief on Threshold Issues pursuant to the Procedural Schedule set forth in the Kentucky Public Service Commission's Order dated May 18, 2010.

## ARGUMENT

### I. THE 1996 ACT DOES NOT AUTHORIZE THE COMMISSION TO ARBITRATE THE QUESTION OF CRICKET'S ENTITLEMENT TO EXTEND ITS EXISTING ICA PURSUANT TO MERGER COMMITMENT 7.4.

AT&T Kentucky demonstrated in its initial brief that section 252(b) of the Telecommunications Act of 1996 ("1996 Act") does not authorize state commissions to arbitrate issues arising out of merger commitments made to the Federal Communications Commission ("FCC"). Rather, section 252(b) authorizes state commissions only to arbitrate open issues arising out of negotiations concerning the duties described in sections 251(b) and (c).[1] The courts have consistently so held, and have reversed state commission decisions arbitrating matters outside the scope of

[1] AT&T Kentucky's Initial Brief on Threshold Issues (AT&T Kentucky Br.) at 6-7.

section 251.[2] Furthermore, the 1996 Act requires state commissions to resolve arbitration issues in accordance with the standards set forth in section 252(c)(1), and those standards cannot possibly be applied to the question whether Cricket may extend its interconnection agreement ("ICA") under Merger Commitment 7.4.[3]

Cricket asserts that the 1996 Act provides for arbitration of "'***any*** open issues' and ***all*** 'unresolved issues' between the Parties to the negotiations."[4] That is incorrect. Would Cricket contend that if it offered to buy a building owned by AT&T Kentucky during the Parties' ICA negotiations, it could seek arbitration on that issue if AT&T Kentucky declined? Of course not. The "any open issues" that are subject to arbitration under the 1996 Act are issues concerning the requirements of the 1996 Act – as the courts have found.[5] Those issues no more include Cricket's asserted rights under Merger Commitment 7.4 than they would include Cricket's right to purchase AT&T Kentucky's building. To be sure, the merger commitment issue concerns an interconnection agreement and the building purchase does not, but that has no bearing on the legal analysis. The three-year extension requirement is not imposed by the 1996 Act, so it cannot be arbitrated in a proceeding under the 1996 Act.

Cricket tries to create the impression that its request to extend its ICA was part and parcel of the Parties' interconnection agreement negotiations under section 252(a) of the 1996 Act,[6] but the impression is false. First, Cricket points to its letter requesting an extension of its ICA – Exhibit B to Cricket's brief. Cricket cunningly calls that letter a

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[2] *Id.* at 7-8.
[3] *Id.* at 8-9.
[4] Initial Brief on Threshold Issues of Cricket Communications, Inc. ("Cricket Br.") at 3-4 (footnotes omitted) (Cricket's emphases).
[5] AT&T Kentucky Br. at 7-9.
[6] *Id.* at 4.

"Negotiation Proposal,"[7] but it was not a negotiation proposal at all. Rather, it was, on its face, a proposal to "immediately enter into an amendment to the current interconnection agreement" to effect a three-year extension pursuant to Merger Commitment 7.4. The letter did not invite negotiation. On the contrary, it asked AT&T Kentucky to "provide your consent to this proposal by contacting me at your earliest convenience." And understandably so, because in contrast to the requirements of the 1996 Act, which affirmatively contemplate negotiation, a request to extend an ICA for three years under the merger commitment calls for either a "yes" or a "no." No negotiations are contemplated, and none was had here.

AT&T Kentucky's response to Cricket's request was a denial – again, no negotiation – and it made clear that the Parties' communications on the subject were not part of their interconnection agreement negotiations. AT&T Kentucky stated:

> As you know, AT&T and Cricket are in the midst of negotiating an interconnection agreement pursuant to Sections 251/252 of the Telecommunications Act of 1996 ("1996 Act"), with the filing of an arbitration petition imminent. Merger Commitment 7.4 is not, of course, a provision of the 1996 Act, and our communications concerning Cricket's request pursuant to Merger Commitment 7.4 are not part of those negotiations.[8]

In short, there can be no serious contention that the Parties "negotiated" Cricket's ICA extension request within the meaning of section 252(a) of the 1996 Act and thereby somehow created an "open issue" concerning Merger Commitment 7.4 subject to arbitration under the 1996 Act. In this regard, the Commission should bear in mind that the Parties jointly moved the Commission to treat the extension request as a threshold issue because, as Cricket puts it, it is a "legal question[] which the Commission can

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[7] *See* cover sheet to Exhibit B to Cricket's Brief.
[8] *See* Exhibit A-3 to Cricket's Petition for Arbitration.

resolve without a hearing or fact finding processes."[9] AT&T Kentucky believes there is no possible basis for a finding that the Parties negotiated Cricket's extension request pursuant to section 252(a), and has attached an Affidavit that attests that they did not.[10] If Cricket wants the Commission to make a factual finding to the contrary, it cannot ask the Commission to do so on a threshold matter that is supposed to be limited to purely legal issues.

Cricket relies heavily on this Commission's exercise of authority to resolve an ICA extension dispute in Case No. 2007-00180.[11] AT&T Kentucky explained in its initial brief, at pages 3-5, why that reliance is misplaced. None of the points for which Cricket cites Case No. 2007-00180 is persuasive, let alone conclusive, here. In short, and taking the points in the order that Cricket presents them:

- It is irrelevant that the 1996 Act authorizes state commissions to "oversee the implementation of, and to enforce the terms of, interconnection agreements they approve,"[12] because Cricket is not asking the Commission to oversee the implementation of, or to enforce the terms of, an ICA.

- That section 252 requires state commissions to arbitrate "open issues to ensure that the resolution of the disputed issue [sic] meets the requirements of section 251"[13] supports AT&T Kentucky's position, not Cricket's. The "open issues" to be resolved under section 252 are issues concerning the fulfillment of section 251 duties, not merger commitment duties, and the Commission cannot possibly arbitrate the merger commitment issue in a manner that "meets the requirements of section 251," because those requirements are entirely separate and apart from the merger commitment.

- It is irrelevant that Kentucky law authorizes the Commission to oversee the rates, terms and conditions of service provided by Kentucky utilities.[14] At the very most, that might mean that the Commission could enforce the merger commitment in a proceeding under Kentucky law (a proposition that AT&T

[9] Cricket Br. at 1.
[10] Exhibit 1 hereto.
[11] Cricket Br. at 4-6.
[12] *Id.* at 4.
[13] *Id.* at 4-5.
[14] *Id.* at 5.

Kentucky does not concede). It cannot mean that enforcement of the merger commitment is permissible under section 252(b).

- It is irrelevant that the FCC has not asserted that state commissions are without jurisdiction to address merger commitment issues,[15] because AT&T Kentucky is not challenging the Commission's jurisdiction to address such issues. The *only* jurisdictional question presented here is whether section 252(b) authorizes arbitration of merger commitment issues. The answer to that question is plainly no, and the FCC has never suggested otherwise.

For these reasons, and the additional reasons set forth in AT&T Kentucky's initial brief, the Commission's decision in Case No. 2007-00180 is not controlling, and should not be followed, here.

Finally, Cricket notes that the Commission has previously arbitrated issues concerning the commencement and termination dates of interconnection agreements.[16] As AT&T Kentucky has demonstrated, however, there is all the difference in the world between arbitrating the term of an ICA pursuant to the "just and reasonable" standard of the 1996 Act and enforcing Merger Commitment 7.4.[17] Just as the fact that the Commission has arbitrated prices for unbundled network elements would not support an argument that the Commission can arbitrate a purchase price for an AT&T Kentucky building, so the fact that the Commission has arbitrated just and reasonable commencement and termination dates for ICAs under the standards of the 1996 Act does not support Cricket's contention that section 252(b) authorizes the Commission to arbitrate Cricket's merger commitment issue.

To borrow from the recent determination of an Arbitrator in Kansas, "If [Cricket] believes [it] can magically transform a merger condition into a 251 or 252 duty under the

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[15] *Id.*
[16] *Id.*
[17] AT&T Kentucky Br. 10-11.

Act, it sorely misunderstands the law."[18] The same is true here. The Commission should hold that it is without authority under section 252(b) to arbitrate in this proceeding the question whether Cricket is entitled to extend its ICA under Merger Commitment 7.4.

## II. MERGER COMMITMENT 7.4 DOES NOT ENTITLE CRICKET TO EXTEND ITS ICA.

AT&T Kentucky has demonstrated that Cricket may not extend its ICA for two reasons: Merger Commitment 7.4 permits a carrier to extend its ICA only if the carrier was a party to that ICA when the merger commitment went into effect, which Cricket was not;[19] and any given ICA can be extended only once pursuant to Merger Commitment 7.4, and Cricket's ICA was already extended once, by Sprint.[20]

Cricket implies that other state commissions have allowed carriers situated similarly to Cricket to extend their ICAs.[21] That is not so. No state commission has ever addressed either of the grounds that AT&T Kentucky has presented here for denying Cricket's extension request. The decisions to which Cricket cites did permit ICA extensions, but in none of those cases did the incumbent local exchange carrier ("ILEC") object to the extension on either of the grounds AT&T Kentucky has set forth in this case. Those decisions therefore carry no weight here.

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[18] Arbitrator's Determination of Unresolved Interconnection Issues Between AT&T and Global Crossing, *Petition of Sw. Bell Tel. Co. d/b/a AT&T Kansas for Compulsory Arbitration of Unresolved Issues with Global Crossing Local Service, Inc. and Global Crossing Telemanagement, Inc. for an Interconnection Agreement Pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996* (Kansas Corp. Comm'n April 23, 2010) (AT&T Br. Exhibit 2), ¶ 108.

[19] *Id.* at 13-14.

[20] *Id.* at 14-16.

[21] *See* Cricket Br. 10 and nn. 22-28.

Cricket makes much of the fact that "current" means "occurring in or existing at the present time,"[22] but that definition does not support Cricket's position that it should be entitled to an extension of an agreement that was not "occurring in or existing at the present time" when the merger commitments became effective. When the federal district court for Connecticut found that extensions under Merger Commitment 7.4 commenced on December 29, 2006,[23] it understood "current" to mean "existing at the present time," and it reasonably understood "present time" to be the time when the merger commitment went into effect. Thus, when the merger commitment went into effect on December 29, 2006, its declaration that AT&T ILECs shall permit a carrier to "extend its current interconnection agreement," meant the carrier could extend *its* interconnection agreement that is in place *now* – on December 29, 2006. This is the most reasonable reading of the merger commitment. As the court stated, one cannot readily "imagine that a [requesting carrier] could wait around 41-and-a-half months and then demand a three-year extension. . . . [W]e have here a national policy that everywhere [requesting carriers] are going to get three years from the merger close date."[24]

In addition, to permit Cricket to extend its ICA now would be inconsistent with this Commission's determination in Case No. 2007-00180 that the starting point for Sprint's extension of its ICA was the merger closing date.[25]

Cricket's initial brief fails to address the second reason that Merger Commitment 7.4 does not permit it to extend its ICA, namely, that the ICA was already extended

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[22] *Id.* at 9.
[23] AT&T Kentucky Br. Exhibit 5, at p. 3, line 23 – p. 5, line 6.
[24] *Id.*
[25] *See id.* at 14 and n.22.

once, so that an extension by Cricket would have the effect of keeping an ICA in effect for six years after its stated expiration date, rather than the three years the merger commitment contemplates.[26] Cricket tries to excuse this omission by stating that it "expect[s] AT&T to argue that the commitment does not apply to the Cricket Kentucky ICA" – as if Cricket had no idea what AT&T Kentucky would argue – and that it will address AT&T Kentucky's arguments in its reply brief.[27] In reality, however, Cricket knew exactly what AT&T Kentucky would argue, because AT&T Kentucky identified its arguments both in its letter denying Cricket's extension request[28] and in its Position Statement on the Decision Point List.[29] By reserving its arguments for reply, Cricket would improperly deprive AT&T Kentucky of the opportunity – an opportunity contemplated by the agreed two rounds of simultaneous briefing – to respond to those arguments. AT&T Kentucky therefore reserves its right to respond as appropriate to any arguments on this issue that Cricket makes in its reply brief.

Cricket complains that AT&T Kentucky's denial of its extension request has increased Cricket's transaction costs, and is therefore inconsistent with the spirit of the merger commitments.[30] That argument goes nowhere. If AT&T Kentucky's denial of Cricket's extension request was well-founded, which it was, then it was Cricket that needlessly increased its own costs (and AT&T Kentucky's) by pursuing the improper request.[31]

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[26] *Id.* at 14-16.
[27] Cricket Br. at 11.
[28] *See* Exhibit A-3 to Cricket's Petition for Arbitration.
[29] *See* AT&T Position on Issue 1 on page 1 of the Decision Point List, Exhibit 2 to AT&T Kentucky's Response to the Petition for Arbitration.
[30] Cricket Br. at 11.
[31] Moreover, if Cricket is confident of its position and seeks to minimize its transaction costs, one wonders why Cricket has not simply asked the FCC to enforce the merger commitment, as the FCC has said it would (*see* Cricket Br. Exhibit A (FCC stating the merger commitments are "enforceable by the FCC")),

Finally, the Commission should disregard Cricket's suggestion that the Commission grant its ICA extension request in order to reduce the Commission's work load.[32] It is true that the Commission will not need to address the remaining arbitration issues if it allows Cricket to extend its ICA, but that is not a proper basis for decision.

## III. AT&T KENTUCKY CANNOT LAWFULLY BE REQUIRED TO PROVIDE TRANSIT SERVICE TO CRICKET PURSUANT TO TERMS AND CONDITIONS IN AN ARBITRATED INTERCONNECTION AGREEMENT.

The question whether transit traffic provisions must be included in the ICA is presented as a threshold issue because it is a "legal question[] which the Commission can resolve without a hearing or fact finding processes."[33] It is striking, therefore, that Cricket's argument is based almost exclusively on fact-based policy considerations, and is practically devoid of legal analysis.

### A. There Is No Transiting Requirement In The 1996 Act.

The core legal question is whether the interconnection requirement in section 251(c)(2) of the 1996 Act implies a transit service requirement. (Recall that an implicit transit requirement in the indirect interconnection requirement of section 251(a)(1) would not help Cricket, because ILECs are not required to negotiate section 251(a)(1) requirements or include them in interconnection agreements.[34]) AT&T Kentucky has provided a thorough demonstration that section 251(c)(2) does not imply a transit service requirement, and that the FCC's interconnection rules are inconsistent with reading any such requirement into the statute.[35]

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rather than litigating the matter in 10 separate state commissions, as the parties are currently scheduled to do – and setting forth additional arbitration issues that would not have to be addressed if Cricket were entitled to the extension.

[32] Cricket Br. at 12.

[33] Cricket Br. at 1.

[34] AT&T Kentucky Br. at 23-25.

[35] *Id.* at 17-20.

Cricket, in contrast, offers no meaningful analysis of section 251(c)(2). Instead, Cricket bases its argument that the ICA should address transit on Commission declarations that make no reference whatsoever to the statute, or to any *legal* basis for a transit requirement,[36] and on policy considerations.[37] Cricket addresses federal law – which should be the focus of the inquiry – only as a secondary consideration, and even then, Cricket first relies on section 251(a)(1),[38] which, again, leads nowhere. When Cricket finally does address section 251(c)(2), all it says is that nothing in that provision excludes transit traffic from the traffic interconnected parties are to exchange.[39] As the FCC has made clear, however, section 251(c)(2) does not include an obligation to transport *any* traffic – let alone transit traffic; rather, it obliges the ILEC only to establish a physical link.[40] The obligation to transport traffic over that link, as the FCC has explained, is found in section 251(b)(5), which indisputably does not concern transit traffic.[41]

### B. Cricket's Policy Argument Is Unavailing.

Bereft of a legal basis for its position, Cricket falls back on policy and argues that because indirect interconnection is essential, AT&T Kentucky must be required to transit traffic from one carrier to another on regulated rates, terms and conditions. Otherwise, Cricket contends, carriers would have to construct direct interconnection facilities that would uneconomically duplicate the AT&T Kentucky facilities that are already in place.[42]

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[36] Cricket Br. at 13.
[37] *Id.* at 14-16.
[38] *Id.* at 16.
[39] *Id.* at 17.
[40] *See* AT&T Kentucky Br. at 19-20.
[41] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 (1996) (subsequent history omitted) ("*Local Competition Order*"), ¶ 176 (discussed in AT&T Br. at 20).
[42] Cricket Br. at 14-16.

Cricket is wrong. Its policy analysis is based on the premise that the only alternative to direct interconnection with third parties is AT&T ILEC transit service. That premise is false, because there are alternative providers of transit service, such as Neutral Tandem and Level 3, and when AT&T Kentucky is not required to provide transit service on regulated rates, terms and conditions, those providers will step in to provide service on terms determined by the competitive marketplace – as they have in other states. As a matter of policy, the Commission should encourage such competition, rather than stifle it by requiring AT&T Kentucky to provide transit service under regulated conditions with which others cannot compete.

In the 1996 Act, Congress required ILECs to provide at cost-based rates, and on regulated terms and conditions, bottleneck facilities without which other carriers could not compete with the ILECs. Thus, since competing carriers must interconnect with the ILEC in order to exchange traffic with the ILEC's customers, the ILEC must provide interconnection – *i.e.*, the physical link with its network – at cost-based rates. Likewise, as long as competing carriers could obtain switching and transport only from the ILEC, the ILEC was obliged to provide those network elements on an unbundled basis at cost-based rates. But when the FCC determined that carriers could obtain switching and transport from alternative suppliers, the FCC relieved ILECs of the duty to provide those elements as UNEs under the 1996 Act. The driving policy consideration is unmistakable: That which only the ILEC can provide, the ILEC must provide at regulated rates, terms and conditions under the 1996 Act. But since the aim of the Act is competition, not regulation, the ILEC is not required to provide at regulated rates, terms and conditions that which is available from alternative providers.

Cricket's assumption that the only alternative to direct interconnection is ILEC-provided transit service may have been defensible in 1996, but it is not today. Today, particularly in states in which the ILEC is not required to provide transit service at cost-based rates with which prospective providers cannot compete, there is vibrant competition to provide the service that Cricket wants the Commission to require AT&T Kentucky to provide at regulated – *i.e.*, non-competitive – rates, terms and conditions. Cost-based transit service is terrific for Cricket, but it kills competition.

As a basic matter of public policy, then, the Commission, instead of trying to ferret out of the 1996 Act a legal basis for requiring AT&T ILEC to provide transit service on regulated terms in an arbitrated interconnection agreement, should recognize that the 1996 Act provides no basis for such a requirement.

Finally in this regard, the Commission should not require AT&T Kentucky to provide transit service at regulated rates, terms and conditions based on a mere *assumption* that that is the only alternative to direct interconnection between third party carriers – or on an *assumption* about efficient network practices – without receiving evidence that would counter those assumptions. AT&T Kentucky agreed that the question whether transit must be covered in the ICA is a threshold question, but only because the Parties agreed the question could be resolved as a matter of law. If the Commission, having recognized that section 251(c)(2) of the 1996 Act does not require transiting, has any inclination to require transit based on factual considerations, it should not decide the question as a threshold matter, but should instead receive evidence, as it will on the other issues in the case.

### C. The Commission's Precedents Do Not Justify Regulation Of Transit Service Under The 1996 Act.

Cricket asserts that this Commission's precedents establish that the Parties' ICA must include transit traffic terms.[43] In reality, this Commission has never come to grips with the question whether section 251(c)(2) requires an incumbent LEC to provide transit service. Indeed, the strongest support that Cricket has managed to find for its position in the Commission's decisions is a mere statement that the FCC has not precluded the Commission from requiring transit terms, and that the Commission has previously required transiting "based on efficient network use."[44]

AT&T Kentucky respectfully submits that this is too slim a reed to support a decision that transit service must be provided pursuant to a section 251/252 interconnection agreement. The Commission should determine whether section 251(c)(2) requires AT&T Kentucky to provide transit service – and it should answer that question in the negative. The Commission should then determine whether, in the absence of authority for a transit requirement in the 1996 Act, there is a state law basis for imposing such a requirement. The Commission should answer that question in the negative – particularly for the reasons discussed in the preceding section. And, finally, if the Commission is inclined to impose a transit requirement under state law, the Commission should reconsider its earlier conclusion that the FCC has not preempted such a requirement, because the FCC has, in fact, done so.[45]

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[43] *Id.* at 13-14.
[44] *Id.*
[45] Cricket cites decisions of several state commissions that ruled ILECs are required to provide transit functions. Cricket Br. at 19-20. None of those decisions includes any serious legal analysis that supports Cricket's position here. Oddly, Cricket points (at p. 20) to a Florida Public Service Commission decision recognizing that section 251(a)(1) implies a transit obligation. As previously explained, however, section 251(a) obligations are not subject to mandatory negotiation or arbitration. Furthermore, the Florida commission has specifically ruled that transit is not required by section 251(c)(2), stating, "A TELRIC rate

### D. The Commission Cannot Lawfully Impose Transit Service On The Parties' Interconnection Agreement Under State Law.

The FCC has purposefully and expressly declined to treat transiting as an implied requirement of the interconnection duty imposed in section 251(c)(2) of the 1996 Act.[46] Accordingly, state commissions, under established principles of conflict preemption, are not free to require transit in a section 251/252 interconnection agreement, because to do so would undermine and conflict with federal law and policy.[47]

## CONCLUSION

For the reasons set forth above and in AT&T Kentucky's Initial Brief on Threshold Issues, the Commission should determine that it is without authority to arbitrate in this proceeding under section 252(b) of the 1996 Act the question whether Merger Commitment 7.4 entitles Cricket to extend its ICA for three years, and if the Commission concludes otherwise, it should rule that Cricket is not entitled to extend the ICA. Finally, the Commission should rule that AT&T Kentucky is not required to include rates, terms, or conditions governing transit service in the Parties' section 251/252 ICA.

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is inappropriate because transit service has not been determined to be a § 251 UNE. We agree with the reasoning of the FCC Wireline Competition Bureau in rendering the *Virginia Arbitration Order* that found no precedent to require the transiting function to be priced at TELRIC under § 251(c)(2). The Bureau went further in saying that if there was a duty to provide transiting under § 251(a)(1), it did not have to be priced at TELRIC." *Re NewSouth Commc'ns Corp.*, Docket No. 040130-TP, 2005 WL 2548249,*43 (Fla. PSC Oct. 11, 2005) (citing Bureau decision discussed in AT&T Kentucky Br. at 18).

[46] *See* AT&T Kentucky Br. at 17-18, discussing *Application of Qwest Commc'ns Int'l, Inc.*, 18 FCC Rcd. 7325, n.305 (2003); *Application of BellSouth Corp.*, 17 FCC Rcd. 25828, ¶ 155 (2002); *Joint Application by BellSouth Corp., et al.*, 17 FCC Rcd. 17595, n.849 (2002); *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5)*, 17 FCC Rcd. 27039, ¶¶ 117 (Wireline Competition Bureau, 2002).

[47] *Id.* at 21-23.

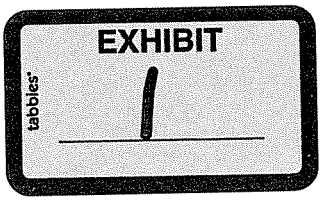
Respectfully submitted this 2nd day of June, 2010.

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

DENNIS G. FRIEDMAN
Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606
(312) 701-7319
dfriedman@mayerbrown.com

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

818355




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

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|---|---|---|
| IN THE MATTER OF PETITION OF CRICKET COMMUNICATIONS, INC. FOR ARBITRATION OF RATES, TERMS AND CONDITIONS OF INTERCONNECTION WITH BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T KENTUCKY | ) ) ) ) ) ) | Case No. 2010-00131 |

## AFFIDAVIT OF KAY LYON

I, Kay Lyon, state as follows under oath:

1. I am employed by AT&T Operations, Inc., which is a subsidiary of AT&T Inc. Currently, I am Senior Customer Contracts Manager for AT&T Connected Communities, which is a strategic marketing initiative between AT&T and builders, developers, multi-family home ownership and manufacturing groups to provide communities with next generation communications technology.

2. Until May 1, 2010, I was a Lead Negotiator for AT&T Wholesale, which is the organization that represents AT&T incumbent local exchange carriers in the negotiation and management of interconnection agreements ("ICAs") with competing local exchange carriers and Commercial Mobile Radio Service ("CMRS") providers. I held that position for over six years, and I specialized in negotiating CMRS interconnection agreements. In that capacity, I was AT&T's lead negotiator for the negotiation of an ICA between AT&T Kentucky and Cricket Communications, Inc. ("Cricket") that culminated in this proceeding.

3. I was AT&T's lead representative in the ICA negotiations with Cricket starting in July, 2009 and continuing through April 30, 2010, when I transferred to my new position.

4. On or about March 11, 2010, I signed and transmitted to K.C. Halm, Cricket's attorney who was Cricket's principal representative in the negotiations with AT&T, a letter (Exhibit B-1 to Cricket's Petition for Arbitration in this matter) confirming the parties' commencement of ICA negotiations pursuant to the Telecommunications Act of 1996 ("1996 Act") .

5. Thereafter, the parties engaged in negotiations pursuant to the 1996 Act.

6. During the course of those negotiations, Mr. Halm raised with me the possibility that Cricket might want to extend its existing Kentucky ICA pursuant to Merger Commitment 7.4. I was mindful at the time that any substantive discussion of that subject would not be part of the ICA negotiations in which we were engaged under the 1996 Act, and the ICA negotiations in which Mr. Halm and I engaged in fact did not include any discussion of the ICA extension possibility Mr. Halm raised.

7. Shortly after Mr. Halm mentioned the possibility that Cricket might want to extent its existing ICA, on or about November 19, 2009, Mr. Halm sent me a letter proposing to extend Cricket's interconnection agreement pursuant to Merger Commitment 7.4. Mr. Halm's letter is Exhibit B to Cricket's Initial Brief on Threshold Issues.

8. I see that on the cover page for Exhibit B, Cricket refers to Mr. Halm's letter as a "Negotiation Proposal." The letter itself makes no mention of negotiation, and I certainly did not understand it to be a negotiation proposal when I received it. Rather, I understood that Cricket was asking AT&T to consent immediately to enter into an amendment to the parties' ICA to extend the ICA for three years. No discussion was invited, and no discussion ensued.

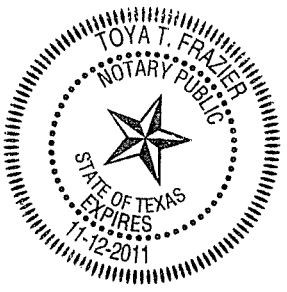
9. On or about December 7, 2009, AT&T responded to Mr. Halm's letter requesting an ICA extension. AT&T Kentucky's letter is Exhibit A-3 to Cricket's Petition for Arbitration. Since I was AT&T's point person for communications with Cricket, I reviewed and edited that letter, in which AT&T made clear that the parties' communications on the subject were not part of their interconnection agreement negotiations. AT&T Kentucky stated:

> As you know, AT&T and Cricket are in the midst of negotiating an interconnection agreement pursuant to Sections 251/252 of the Telecommunications Act of 1996 ("1996 Act"), with the filing of an arbitration petition imminent. Merger Commitment 7.4 is not, of course, a provision of the 1996 Act, and our communications concerning Cricket's request pursuant to Merger Commitment 7.4 are not part of those negotiations.

AT&T Kentucky's letter denied Cricket's request to extend its ICA.

10. I participated in no negotiation concerning Cricket's ICA extension request. I would know if any such negotiation occurred as part of the Parties' ICA negotiations pursuant to the 1996 Act, and I can attest that none did prior to the end of my work with Cricket on April 30, 2010.

FURTHER AFFIANT SAYETH NOT.




Kay Lyon

SUBSCRIBED and SWORN to before me this 1st day of June, 2010.

Notary Public

CERTIFICATE OF SERVICE – PSC 2010-00131

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 2nd day of June 2010.

Douglas F. Brent
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 W. Jefferson Street
Louisville, KY 40202

K. C. Halm
Richard Gibbs
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, N.W., Suite 200
Washington, DC 20006

Mary K. Keyer