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August 31, 2012

Administrative Regulations Working Group
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40601

RE: Post-Hearing Comments of Sprint, tw telecom of kentucky llc and Verizon Business

Dear Ladies and Gentlemen:

These comments are filed on behalf of Sprint Communications Company L.P., tw telecom of kentucky llc, and Verizon Business.[1] These carriers ("CLECs") provide nonbasic service and access services in Kentucky. The comments are consistent with testimony provided at the Commission's August 27, 2012 hearing.

Background Pertinent to Rule Changes Affecting the Telecommunications Industry

Any rule changes affecting the wireline telecommunications industry must be informed by two sections of KRS Chapter 278. First, under KRS 278.512(2), enacted in 1992, the Commission may exempt telecommunications providers from any requirements under Chapter 278 and related regulations if the Commission finds by clear and satisfactory evidence that it is in the public interest to grant such an exemption. In determining what qualifies as the public interest, the Commission is to consider a number of factors, including the number and size of competitive providers of service, the overall impact of the proposed regulatory change, and the overall impact on customers of a proposed change to streamline regulatory treatment. As discussed below, the Commission has applied these standards in at least three generic proceedings concerning competitive telecommunications providers.[2] Accordingly, ministerial

[1] MCI Communications Services, Inc. d/b/a Verizon Business Services, Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions, TTI National, Inc., Teleconnect Long Distance Service & Systems d/b/a Telecom*USA and Verizon Select Services, Inc. (collectively, "Verizon Business").
[2] *Exemptions for Interexchange Carriers*, Adm. Case No. 359 (June 21, 1996) (transfers of control and financing); *Exemptions for Providers of Local Exchange Service Other Than Incumbent Local Exchange Carriers*, Adm. Case No. 370 (January 8, 1998) (same); *Petition of CompSouth*, Case No. 2007-00084 (August 20, 2007) (eliminating annual reports for CLECs).

updates to the Commission's regulations should be consistent with policy precedents determined in those cases. Where appropriate, the Regulatory Impact Analysis and Tiering Statement(s) provided to the Legislative Research Commission should state that no proposed change is intended to either increase the regulation of non-incumbent providers of telecommunications service or to remove exemptions from regulation previously ordered.

Second, the General Assembly not only gave the Commission the forbearance authority noted above, it also deregulated many aspects of the telecommunications industry in Kentucky. Specifically, *2006 KY Acts Ch. 239*, usually referred to as House Bill 337, limits additional regulation of rates, terms and conditions for the nonbasic, retail services offered by all carriers, including the CLECs. Therefore, adding burdensome requirements to competitive telecommunications service providers, even with a goal of influencing service quality, is beyond what the new law permits, at least with respect to nonbasic services subject to marketplace competition.

Finally, it is worth noting that the Administrative Regulations Working Groups were formed after the Commission said their mission would be to look at rules governing agency practice and procedure, and tariffs. As Columbia Gas noted at the hearing, the Commission's General Rules were not discussed until several months after membership was determined. Accordingly, any substantive requirements added after the working groups were formed seem to be beyond the scope of the project, as originally envisioned and described. If substantive requirements are to be added to the rules, the Commission must be sure all utilities have been given fair notice of the scope of the rulemaking. Specific comments are as follows.

Rules of Procedure, 807 KAR 5:001

As several utilities testified, the proposed default two year expiration on confidential treatment would be burdensome on parties and seems inconsistent with the exceptions to public disclosure provided with the Kentucky Open Records Act. This proposal should not be adopted.

The CLECs also propose a minor change to Section 17 related to applications for approval of financing. Exercising its authority under KRS 278.512, the Commission has waived all requirements for CLECs and IXCs to seek approval for financing and changes in control. This section should indicate that it does not apply to non-incumbent local exchange carriers or to long distance providers. As written, page 44, line 21-22 refers to applications made by "the utility." Changing "the" to "a" would address the concern.

General Rules, 807 KAR 5:006

Section 3, Utility contact information. For CLECs providing nonbasic service, KRS 278.542(2) prescribes the contact information a CLEC provides to the PSC. The regulation should be consistent, and CLECs should only be required to provide one office address.

Section 4(2). Financial and Statistical Reports. As written, this rule refers to "every utility." The Commission should clarify this section and codify the *CompSouth* decision. Also, if a CLEC is not required to file a financial and statistical report other than its statement of gross revenues, it should have no obligations to file an audit report or a statement that no audit was

performed (p. 4, lines 13-19). In addition, the Commission's Summary of Incorporated Material must be revised to state that CLECs do not file the "Annual Reporting Form for Local Exchange Carriers." Notably, the summary already acknowledges ILECs that have elected the deregulation plan of KRS 278.543 do not file the form.

Inspection Rules for Telephone Utilities. The Commission should apply a tiering analysis under KRS 13A.210 and exempt the CLECs. Responsibility to manage vegetation, if it is applied to the telecommunications industry at all, should be limited to pole owning utilities. Pole owners have obtained franchises or easements that give them access to the real property where the poles are. If vegetation on private property is an issue, pole owners likely have clearer rights to "manage" vegetation. Also, on some routes, there could be multiple attachers in the telecom space, in addition to an incumbent phone company. A rule that requires multiple entities to inspect and "manage" the same area adds complexity and regulatory burdens without any finding of an actual problem that needs to be solved. Tiering could address this concern by reducing disproportionate impacts on certain classes of regulated entities, including entities that do not contribute significantly to the problem the administrative regulation was designed to address.

Tariffs, 807 KAR 5:011

KRS 278.544 (4), enacted in 2006, eliminates the requirement for telecommunications carriers to file special contracts for nonbasic service, although nothing prohibits filing them, and some carriers may choose to file them. If Section 13 of the tariff rules is being recodified, the Commission should consider language to harmonize this regulation with the statute, simply to avoid confusion. On page 14 of the draft, the rule could be changed to state "With the exception of agreements subject to KRS 278.544 (4), each utility shall file a copy of all special contracts entered into. . ."

Sincerely yours,

Douglas F. Brent

DFB: jms