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June 11, 2010

Jeff R. Derouen, Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, KY 40602-0615

Re: Comments of the Competitive Carriers of the South, Inc.  
about the AT&T Complaint (Case No. 2010-00162)

Dear Mr. Derouen:

On April 21, 2010, the Public Service Commission of Kentucky (“the Commission”) received a Petition and Complaint Seeking Reduction of Intrastate Switched Access Rates (“the Complaint”) from AT&T Communications of the South Central States, TCG of Ohio, BellSouth Long Distance Inc. d/b/a AT&T Long Distance Service, and BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (collectively, “AT&T”). The Competitive Carriers of the South, Inc. (“CompSouth”), through its undersigned counsel, hereby submits these comments regarding proceeding with AT&T’s proposed complaint case. CompSouth further states as follows:

1. CompSouth<sup>1</sup> is a not-for-profit corporation whose members provide competitive telecommunications services in Kentucky. Individual members of CompSouth are named by AT&T on Exhibit A (CLECs) to be defendants to its Complaint. As noted by AT&T in ¶2 (p.19) of its Complaint, most CLECs also provide competitive long-distance services as IXCs, and this is true of CompSouth members.

2. The Complaint does not conform to the requirements of KRS 278.260(1). The case proposed by AT&T generically complains about the intrastate access charges of all other ILECs and nearly all of the CLECs in Kentucky, and requests indiscriminate changes to such rates to subject them to generic rules. *See, e.g.*, Complaint p.3. Such relief is more suitable to promulgation through regulation, than in the course of (what should be) an individual complaint case.

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<sup>1</sup> The CompSouth members participating in this filing are Access Point, Inc., Birch Communications, Inc., Cavalier Telephone, Cbeyond Communications, Covad Communications Company, Deltacom, Inc., Level 3 Communications, LLC, tw telecom of ky llc, and XO Communications Services, Inc.

3. AT&T does not establish how it is “directly interested” in any rate it challenges. The harms it alleges are to end-use consumers or competition in general. *See, e.g.*, Complaint pp.9-14, 23 (¶11). Its attempt to impose pricing inflexibility on others — whether mirroring or caps — inappropriately seeks to require other ILECs and CLECs to follow its lead, as in the time of the dominant “old AT&T.”

4. AT&T does not establish that any rate it challenges is “unjustly discriminatory.” It complains generally that the other ILECs’ intrastate access charges are higher than their interstate charges and that — for most of the CLECs — a calculated measure of “blended Intrastate Average Switched Access Rate/Minute” is higher than that for AT&T. *See* Complaint p.9 & Exhs. C-D. This is not discrimination prohibited by KRS 278.170(1). CompSouth members and other CLECs are not alleged to be maintaining an unreasonable difference between customers, localities, or classes of service — but of charging rates different from those charged by AT&T.

5. AT&T does not establish that any rate it challenges is “unreasonable.” It does not attempt to show that the interstate access charges of any other ILEC are the maximum reasonable charges for intrastate access service by that ILEC, or that a cap set by competitor-ILECs’ charges is the maximum reasonable charge for any CLEC’s intrastate access services. Furthermore, CLECs in general do not “charge intrastate switched access rates that are several times the corresponding rates of the ILECs with which they compete,” Complaint pp.5-6.<sup>2</sup> As AT&T’s own analysis shows, nearly all of the CLECs’ rates are lower than the 6¢/minute or more charged by the RLECs, and a simple average of all the ILECs’ rates is well in excess of the 3.53¢/minute average AT&T calculates from a selection of CLECs that do not mirror AT&T’s rates.<sup>3</sup> Indeed, many of the CLECs charge a lower rate per minute for intrastate access than do some of the ILECs for interstate access. *Compare* Complaint Exh. C with Exh. D.

6. This diversity of rates results from individual responses to market forces within a particular regulatory context. AT&T acknowledges that there are differences between the defendant LECs that mean that an appropriate “solution” for one may be “totally impractical” for another, Complaint pp.18-19, but nonetheless makes no distinction among ILECs or CLECs as to its Complaint allegations or the requested relief.

7. On March 16, 2010, the Federal Communications Commission (“FCC”) released a National Broadband Plan that makes recommendation for, *inter alia*, reform of intercarrier compensation, including switched access charges. The FCC has also issued an agenda outlining

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<sup>2</sup> *See also* Complaint ¶5 (p.20): “CLECs’ intrastate switched access rates are generally well above the intrastate switched access rates of the ILECs with which they compete.”

<sup>3</sup> One of the listed mirroring CLECs is CompSouth participating member Birch Communications, Inc.

the timeline for administrative proceedings to implement those recommendations, with an inter-carrier compensation reform proceeding to begin in the fourth quarter of this year. Given the lack of any general crisis with respect to Kentucky switched access rates and the anticipated FCC action, it is unnecessary — and would likely lead to wasted effort by the parties and the Commission — to proceed with this matter at this time.

CompSouth respectfully suggests that the Commission not accept the Complaint or issue an order pursuant to 807 KAR 5:001, Section 12, requiring any of its members to satisfy or answer the Complaint. Furthermore, if the Commission chooses to open an administrative proceeding about intrastate access rates, CompSouth respectfully suggests that the Commission begin such proceedings only after the FCC provides intercarrier compensation reform details (guidelines or requirements) resulting from the National Broadband Plan.

To assist in the Commission's consideration of these comments in determining what to do with the AT&T Complaint, I have enclosed ten (10) copies of this letter. Please stamp the additional copy with the date of the Commission's receipt and return it to me in the enclosed self-addressed, stamped envelop.

Sincerely,

Katherine K. Yunker

Enclosures

cc: CompSouth  
Service List (attached)

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