COMMONWEALTH OF KENTUCKY BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

The Application of Competitive Carriers of the South, Inc. for a Declaratory Order Affirming that the Interconnection Regimes under KRS 278.530 and 47 U.S.C. § 251 are Technology Neutral

Case No. 2015-00283

REBUTTAL TESTIMONY OF JOSEPH GILLAN ON BEHALF OF COMPSOUTH

1 Q. Please state your name, business address and the party sponsoring your 2 rebuttal testimony. 3 4 A. My name is Joseph Gillan. My business address is P. O. Box 540386, Merritt 5 Island, Florida 32954. As with my direct testimony, my rebuttal testimony is filed 6 on behalf the Competitive Carriers of the South, Inc. ("CompSouth"). 7 8 Q. What is the purpose of your rebuttal testimony? 9 10 A. The purpose of my rebuttal testimony is to respond to those very few issues of 11 fact raised in the testimony filed by AT&T and Verizon. Most of the arguments 12 raised by these companies are legal and are therefore best addressed through

CompSouth members participating in this proceeding are Birch, Level 3 and Windstream.

Testimony Joseph Gillan CompSouth - Public Version

1	briefs. Indeed, witnesses for both Verizon and AT&T acknowledge that this is
2	primarily a dispute about what is required by law,2 which is precisely why
3	CompSouth filed a Petition to resolve the question to begin with. ³
4	
5	There are only a few factual issues to address. The first is whether companies
6	have requested interconnection in IP format, while the second is whether that
7	question is actually relevant. I address both points below. Contrary to AT&T's
8	testimony, CompSouth members have discussed IP interconnection with AT&T
9	but even if they had not, they should have the right to review any agreement
10	AT&T has reached, both to determine whether it is suitable for themselves and/or
11	to ensure that it does not discriminate against them. To do so, however, requires
12	that the Commission make clear that AT&T must file its agreements.
13	
14	At the outset, however, I want to emphasize the most important conclusion of my
15	rebuttal testimony, which is akin to the famous "dog that did not bark." ⁴ That is,

Policeman: "Is there any other point to which you would wish to draw my

attention?"

Holmes: "To the curious incident of the dog in the night-time."

Policeman: "The dog did nothing in the night-time."

AT&T Kentucky effectively filed its brief as an attachment (JSM-1) to its witness' testimony, while Verizon pointed the Commission to the Response of BellSouth Communications, LLC to Application of Competitive Carriers of the South, Inc., for a Declaratory Order (Testimony of Paul Vasington at 3).

See *CompSouth Application* and Reply by Applicant Competitive Carriers of the South, Inc., November 2, 2015 ("*CompSouth Reply*").

There is a famous Sherlock Holmes clue that concerns the "dog that did not bark." The basic thrust of the clue was that the <u>absence</u> of a dog barking helped Holmes solve a case. The specific short story is "Silver Blaze," titled after the name of a race horse that disappeared. Although the quote has become popularized as the "dog that did not bark," the actual dialog is much more elegant:

	what is most telling about the testimony of Verizon and AT&T is what they			
	choose to ignore completely. Specifically, my direct testimony explained that the			
	FCC provided the Commission with (a) a clear instruction that the state			
	commission role is to review agreements to determine whether they must be filed			
	in accordance with section 252 of the federal Act, and (b) that the only			
	agreements (those of Verizon) that have been made public clearly satisfy the			
	standards that the FCC directed state commissions to use in their review. As a			
	result, any agreement similar to those of Verizon should be filed for approval in			
	accordance with section 252 of the federal Act. ⁵			
	Did either AT&T or Verizon challenge your analysis of Verizon's IP			
interconnection agreements?				

Q.

A. No, and hence the reference to the "dog that did not bark." The most important part of the AT&T and Verizon testimony is their silence on the factual analysis that I provided. The most pertinent *factual* issue in this proceeding is whether AT&T has similar agreements and do those agreements satisfy the FCC's criteria to be judged as Interconnection Agreements addressing the exchange of voice

Holmes: "That was the curious incident."

The agreements analyzed in my direct testimony need not be filed in Kentucky as Verizon is not an ILEC in Kentucky and the agreements do not apply. That said, the agreements are a useful exemplar as they demonstrate that there is simply not a meaningful difference between an IP voice interconnection agreement and the Interconnection Agreements that have been filed with the PSC in the past.

traffic that must be filed with the Commission.⁶ AT&T admits that voice traffic is completed to AT&T-KY customers in IP format, but will not provide copies of the agreements.

It is <u>this Commission</u> that the FCC has charged with the responsibility to review any such agreements and determine whether they must be filed. AT&T has prevented the Commission from performing this role by refusing to provide its agreements (even if under confidentiality protection while the Commission determines whether to require their filing).

Q. Have CompSouth members attempted to negotiate with AT&T IP voice interconnection?

A. Yes. I reviewed a confidential non-disclosure agreement between AT&T and Level 3 that concerns the exchange of voice traffic in IP format dated April 1, 2015. Paragraph 7 of that agreement permits either party to "disclose to the FCC and/or relevant state regulatory commissions, solely for the purposes of providing general information concerning the exchange of voice traffic and RCS in IP, the existence of discussions ... between the parties regarding IP-based exchange of traffic." Additionally, I believe that AT&T's discovery responses make clear that parties have discussed IP interconnection, including interconnection for voice

See "The Importance of Section 252 to Competition and the Public Interest: The Continuing State Role in the Age of IP Networks" (October 2015). Attached to CompSouth Reply.

1		traffic that originates and terminates with AT&T-KY customers, but that because
2		the discussions have been with AT&T (albeit on behalf of its affiliates), AT&T
3		claims that AT&T-KY has not received requests. It is unclear why AT&T did not
4		simply acknowledge that parties have, in fact, requested IP interconnection and
5		state so clearly at the outset (rather than making this an issue).
6		
7	Q.	Is it relevant whether companies have requested IP voice interconnection?
8		
9	A.	No. As I explained in my testimony – and a critical point that neither Verizon nor
10		AT&T disputed – the foundation of local competition is the ability to opt into
11		previously negotiated agreements. This is critical feature of the 251/252
12		interconnection regime that lies at the heart of the 1996 federal
13		Telecommunications Act. A carrier need not request IP interconnection to have
14		the right to review agreements signed by other parties. Every carrier has the right
15		(under section 252) to review an agreement to determine whether it should adopt
16		it, as well as the right to review agreements that its rivals have signed to
17		determine whether they were discriminatory. Neither of these rights can be
18		exercised unless the contracts are filed and available for review.
19		
20	Q.	Does AT&T-KY have any IP voice interconnection agreements?
21		
22	A.	AT&T acknowledges that AT&T-KY has voice customers served using IP
23		technology, and that the traffic to/from these customers is exchanged in IP

1		format. ⁷ Nevertheless, AT&T claims that AT&T-KY has no agreement to
.2		exchange voice traffic in IP format with any other carriers. Rather, an AT&T
3		affiliate exchanges the traffic, but AT&T never explains how the IP voice traffic
4		is then exchanged with AT&T-KY, where the traffic originates and terminates.
5		This would seem to suggest that AT&T-KY does not deal with AT&T on an
6		arms-length basis - or on any-length basis - that can be explained.
7		
8	Q.	Is AT&T-KY actively serving voice customers in KY using IP technology?
9		
10	A.	Yes. These are not theoretical concerns. As of June 2016, over a of
11		AT&T's consumer lines are served using IP technology.8 The ability of other
12		companies to efficiently exchange voice traffic with AT&T-KY under
13		nondiscriminatory terms and conditions requires that the Commission oversee the
14		Act's interconnection provisions for both the base of customers served by IP
15		technology in addition to the obsolescing TDM technology in AT&T-KY's
16		network.
17		

⁷ See AT&T Kentucky's Supplemental Responses to CompSouth RFIs 3, 4 and 5, filed January 12, 2015 which states in relevant part:

Upon information and belief, AT&T Kentucky's non ILEC affiliate, AT&T Corp., is a party to contracts that provide for and govern the exchange in IP format of certain voice traffic that originates with or terminates to end users in Kentucky, some but not all of which end users are customers of AT&T Kentucky.

⁸ AT&T Kentucky's Supplemental Responses to RFIs 14-15.

1	Q.	Do AT&T and Verizon offer all carriers the same terms, conditions and
2		prices?
3		
4	A.	No. Both AT&T and Verizon acknowledge that parties must negotiate IP
5		interconnection agreements blind, with only AT&T and Verizon knowing the
6		terms of all the agreements.9 Unless state commissions affirm their jurisdiction
7		over all voice interconnection matters regardless of the underlying technology and
8		bring these contracts into the light, as required by section 252, the
9		nondiscrimination protections of section 252 will cease to exist.
10		
11	Q.	Does this conclude your rebuttal testimony?
12		
13	A.	Yes.

Ibid, Request Nos. 6 and 7; Verizon's Responses to CompSouth's Data Requests, RFIs 3 and 4, filed November 23, 2016.

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VERIFICATIO	ON OF JOSEPH GILI	LAN	
STATE OF FLORIDA)		
COUNTY OF BREVARD)		
Joseph Gillan, owner/economist with has read the foregoing prepared rebuttal test to the questions if so asked upon taking the are true and correct to the best of his knowledge.	stimony and that he work stand, and that the man	ıld resp ters an	ond in the same manner
The foregoing Verification was sign day of February, 2017, by Joseph Gillan.	ned, acknowledged and	sworn	to before me this 16
Douglas J. Owens State of Florida MY COMMISSION # EE 878661 Expires: February 26, 2017	NOTARY PUBLIC, Commission expiration		