

**BEFORE THE KENTUCKY  
PUBLIC SERVICE COMMISSION**

In the matter of

Application of Competitive Carriers of the            )  
South, Inc. for a Declaratory Order Affirming        )  
that the Interconnection Regimes Under KRS        ) Case No. 2015-00283  
278.530 and 47 U.S.C. § 251 are                    )  
Technologically Neutral                                )

**RESPONSE TO COMPSOUTH’S NOTICE OF PENDING  
DISSOLUTION AND REQUEST FOR DECLARATORY ORDER**

AT&T Kentucky<sup>1</sup> respectfully submits this response to Competitive Carriers of the South, Inc.’s Notice of Pending Dissolution and Request for A Declaratory Order, filed October 31, 2017 (“Notice”).

The ostensible purpose of the Notice was simple: to inform the Commission that CompSouth will dissolve on or about December 31, 2017, and that CompSouth wants the Commission to issue a final ruling before that happens. To communicate that effectively would take about one page. CompSouth, however, leveraged the occasion into what is in effect an improper supplemental brief on the merits – not until page 5 does the Notice actually say that CompSouth is dissolving – coupled with misleading jabs about AT&T Kentucky’s supposed delay strategy.

Those jabs, in addition to being irrelevant, are also false and misleading. Merely by way of example:

(1) The motion that AT&T Kentucky filed on July 7, 2016, was not filed for the purpose of delay, as CompSouth asserts.<sup>2</sup> Rather, the purpose was to ask the Commission set dates for

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<sup>1</sup> BellSouth Telecommunications, LLC, d/b/a AT&T Kentucky

<sup>2</sup> Notice at 2.

briefs and for requests for oral argument on the issues in the case, which all parties agree are legal. That was a perfectly legitimate purpose – and in fact, the Commission granted the motion in substantial part.<sup>3</sup> If delay were the aim of its motion, AT&T Kentucky would have advocated an evidentiary hearing; instead, AT&T Kentucky has consistently taken the position that there should not be an evidentiary hearing.

(2) CompSouth’s statement that it “was forced to file a motion to compel”<sup>4</sup> is false. In violation of the Commission’s Rules and Orders, CompSouth filed a motion to compel further discovery responses from AT&T Kentucky and Verizon without making any attempt to confer beforehand.<sup>5</sup> In light of that violation, CompSouth was forced to withdraw the motion to compel and to confer with AT&T Kentucky and Verizon.<sup>6</sup> When the parties did confer, they fully resolves their discovery differences. Thus, if CompSouth had conferred as the Commission requires before filing its motion to compel, there would have been no need for a motion.

Notwithstanding its improper supplemental briefing and irrelevant and baseless invective about AT&T Kentucky’s imaginary delay strategy, there are several key points that CompSouth fails to mention:

1. There is a pending motion for oral argument.<sup>7</sup> Because the case presents predominantly legal issues, as all parties agree, it would be appropriate and helpful to the

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<sup>3</sup> The Commission’s Order on AT&T Kentucky’s motion, issued August 9, 2016, set a date for one brief, rather than the two briefs that AT&T Kentucky proposed, and for requests for oral argument, as AT&T Kentucky proposed.

<sup>4</sup> Notice at 2.

<sup>5</sup> See AT&T Kentucky’s Motion to Strike CompSouth’s Motion to Compel, Suspend Procedural Schedule, Convene a Status Conference, and Request for Expedited Ruling (Dec. 9, 2016); Verizon’s Motion to Strike CompSouth’s Motion to Compel and Request for Additional Relief (Dec. 12, 2016).

<sup>6</sup> See Joint Motion to Suspend Current Procedural Schedule and Withdrawal of Pending Motions without Prejudice (Dec. 23, 2016).

<sup>7</sup> See AT&T Kentucky’s Motion for Oral Argument (March 24, 2017); CompSouth’s Response to Motion for Oral Arguments (March 27, 2017); AT&T Kentucky’s Reply in Support of Motion for Oral Argument (March 29, 2017).

Commission to hear oral argument from the parties' legal counsel. In its August 9, 2016, Order on AT&T Kentucky motion concerning briefing and possible oral argument, the Commission stated (at pp. 2-3), "The Commission will also schedule a hearing in this case, and, depending upon the result of discovery and briefing, will reserve the option of amending the hearing to include oral arguments." The parties subsequently agreed to forego an evidentiary hearing. Consequently, oral argument would be the only opportunity for the parties to present their positions live to the Commission and to address any questions or concerns the Commission may have. The next step for the Commission is not to decide whether to issue a declaratory ruling; rather, it is to rule on the motion for oral argument. And, if anything, CompSouth's improper supplemental briefing on the merits further justifies oral argument.

2. While purporting to discuss the merits of its request for a declaratory ruling, CompSouth's Notice entirely disregards AT&T Kentucky's argument on the merits – namely, that the Commission can lawfully do only that which Kentucky law authorizes it to do, and Kentucky law does not authorize the Commission to issue a declaratory ruling one way or the other on the issues CompSouth has raised.<sup>8</sup>

3. The notice implicitly recognizes that once CompSouth dissolves, this case will have to terminate unless a CompSouth member has been substituted for CompSouth, as CompSouth indicates may be requested.<sup>9</sup> But CompSouth fails to take into account the fact that if the Commission were to issue the declaratory ruling CompSouth has requested, one or more of the intervenors would almost certainly file an appeal – and that would probably come after CompSouth dissolved, and therefore could not participate in the appeal. Accordingly, if

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<sup>8</sup> See AT&T Kentucky's Initial Brief (March 24, 2017).

<sup>9</sup> Notice at 5 n.15.

CompSouth's members want to preserve the viability of their position, one of them should seek to substitute for CompSouth as soon as practicable. If CompSouth's members wait until after the Commission issues a final ruling in the case, it may be too late.

Respectfully submitted,

/s/ Cheryl R. Winn  
Waters Law Group, PLLC  
12802 Townepark Way, Suite 200  
Louisville, KY 40243  
Telephone: (502) 425-2424  
Facsimile: (502) 425-9724  
Email: [crwinn@waterslawgroup.com](mailto:crwinn@waterslawgroup.com)

Dennis G. Friedman  
J. Tyson Covey  
Mayer Brown LLP  
71 South Wacker Drive  
Chicago, IL 60606  
Telephone: (312) 782-0600  
Email: [dfriedman@mayerbrown.com](mailto:dfriedman@mayerbrown.com)  
[jcovey@mayerbrown.com](mailto:jcovey@mayerbrown.com)

**FILING NOTICE AND CERTIFICATE**

The undersigned hereby certifies that the foregoing is a true and accurate copy of the same document being filed in paper medium with the Commission within two business days; that the electronic filing was transmitted to the Commission on November 2, 2017; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

/s/ Cheryl R. Winn