

**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) Case No. 2015-00283
Under KRS 278.530 and 47 U.S.C. § 251 are)
Technologically Neutral)

**REPLY IN SUPPORT OF AT&T KENTUCKY’S
MOTION TO STRIKE IRRELEVANT PORTIONS OF
REBUTTAL TESTIMONY OF JOSEPH GILLAN**

AT&T Kentucky¹ respectfully submits this Reply in support of its Motion to Strike Irrelevant Portions of the Rebuttal Testimony of Joseph Gillan on behalf of CompSouth (“Motion”).

Both before and after CompSouth filed the Rebuttal Testimony, the Parties discussed the possibility of stipulating prefiled testimony into the record and presenting this matter to the Commission on briefs and subsequent oral argument. In light of that, AT&T Kentucky filed its Motion, in part, to preserve its legal arguments in this proceeding and to avoid any suggestion by CompSouth that AT&T Kentucky somehow concedes the relevance of the testimony that is subject to the Motion to Strike.² AT&T Kentucky, of course, understands that the Commission likely will avoid making any ruling on the Motion that suggests that the Commission has pre-determined any legal issues in this proceeding. Accordingly, and because the arguments in CompSouth’s response generally do not warrant discussion, AT&T Kentucky will address only a few of those arguments in this reply.

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

² AT&T Kentucky makes no such concession and, for all of the reasons set forth in the Motion to Strike, the portions of the Rebuttal that are subject to the Motion are irrelevant to, and have no bearing on, any of the issues in this proceeding.

The Motion demonstrated that each passage of the Rebuttal Testimony that AT&T Kentucky moved to strike is irrelevant because it has no tendency to make any fact of consequence to any issue in the case more probable or less probable than it would be without that testimony. CompSouth's response fails to refute that demonstration. Instead, CompSouth begins with off-base assertions about legal authority and burden of proof, and then argues that the testimony at issue is relevant to propositions that CompSouth claims are of consequence, but that clearly are not.

For example, the first paragraph of the Introduction to CompSouth's response states that the passages of testimony AT&T Kentucky has moved to strike

are relevant . . . because they demonstrate what CompSouth has suspected all along – AT&T Kentucky and other legacy carriers strongly prefer to keep their networks outside the legal framework of KRS 278.530 and 47 U.S.C. § 251 so that they may discriminate between carriers and offer IP-based interconnection on terms that are arbitrary and one-sided.³

But whether or not legacy carriers would like to keep their networks outside the legal framework of those statutes has no conceivable bearing on what those statutes mean, or on any other issue in the case. Thus, the very first point in CompSouth's Response is an admission that the Rebuttal Testimony is irrelevant, because the fact that CompSouth claims the testimony demonstrates is of no consequence to this case.

Similarly, CompSouth states that the Rebuttal Testimony sets forth:

reasons why the Commission should affirm its jurisdiction over IP Voice Interconnection, and in the natural course of that jurisdiction, why AT&T Kentucky should be required to file IP Interconnection Agreements with the Commission⁴

³ Response to Motion to Strike ("Response") at 1.

⁴ Response at 2.

As AT&T Kentucky demonstrated, however, this case is not about whether AT&T Kentucky should be required to file any agreements; it is about whether state or federal law authorize the Commission to enter the declaratory ruling requested by CompSouth, and they clearly do not.⁵

CompSouth continues the pattern when it argues that certain testimony that is subject to the Motion in fact makes “one of the key points of the Rebuttal Testimony, which is the now established fact that AT&T Kentucky is allowing a non-jurisdictional affiliate⁶ to enter into IP Interconnection Agreements that involve service to AT&T Kentucky’s customers.”⁷ But what CompSouth calls a key point is patently irrelevant: Whether or not an affiliate of AT&T Kentucky is entering into IP Interconnection Agreements that involve service to AT&T Kentucky’s customers cannot possibly help the Commission decide the extent to which the FTA or KRS 278.530 apply to AT&T Kentucky in the context of IP interconnection.

CompSouth says it is troubled that the only legal authority in the Motion is the definition of “relevant evidence” in Kentucky Rule of Evidence 401.⁸ But that is the only legal authority a motion to strike needs. The only issue is whether the contested testimony has any tendency to make the existence of *any fact of consequence to the case* more probable or less probable than it would otherwise be. And as explained in the Motion, it does not.

Each passage of testimony AT&T Kentucky has moved to strike is irrelevant for one or more of the following reasons:

⁵ AT&T Kentucky’s Position on Application of CompSouth for a Declaratory Order (Exhibit JSM-1 to Direct Testimony of Scott McPhee on Behalf of AT&T Kentucky (Oct. 26, 2016).

⁶ CompSouth does not explain what it means by “non-jurisdictional affiliate,” but the point seems to be that AT&T Corp. is not within this Commission’s jurisdiction.

⁷ Response at 5.

⁸ Response at 2.

1. This case is not about whether IP interconnection agreements have to be filed.
2. This case is not about whether requesting carriers should be able to review IP interconnection agreements.
3. The fact that Level 3 discussed IP interconnection with AT&T Corp. – *at AT&T Corp.'s request* – is not relevant (although it is relevant that no CompSouth member has asked AT&T Kentucky for IP interconnection and that AT&T Kentucky has not refused any CompSouth member's request for interconnection).

CompSouth has not refuted any of those propositions.

For the reasons set forth in the Motion and above, AT&T Kentucky respectfully urges the Commission to grant the Motion.

Respectfully submitted,

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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 March 7, 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

