

**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)

Direct Testimony of Scott McPhee

On Behalf of AT&T Kentucky

October 26, 2016

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is J. Scott McPhee. My business address is 5001 Executive Parkway, San Ramon, California, 94583.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?

A. I am an Associate Director – Wholesale Regulatory Policy & Support for AT&T Services, Inc. I work on behalf of the AT&T incumbent local exchange carriers (“ILECs”) throughout AT&T’s 21-state ILEC territory. I am responsible for providing regulatory support relative to various wholesale products and pricing, supporting negotiations of interconnection agreements (“ICAs”) with Competing Local Exchange Carriers (“CLECs”) and Commercial Mobile Radio Service (“CMRS”) providers, participating in state commission and judicial proceedings, and guiding compliance with the federal Telecommunications Act of 1996 (“Federal Act”) and its implementing rules.

Q. PLEASE SUMMARIZE YOUR BACKGROUND.

A. I received my Bachelor of Arts degree with a double major in Economics and Political Science from the University of California at Davis. I began my employment with SBC Communications Inc. in 2000 in the Wholesale Marketing – Industry Markets organization as Product Manager for Reciprocal Compensation throughout SBC’s legacy 13-state region. My responsibilities included identifying policy and product issues to assist negotiators and witnesses for SBC’s reciprocal compensation and interconnection arrangements, as well as SBC’s transit traffic offering. In June of 2003, I moved into my current role as an Associate Director in the Wholesale Marketing Product Regulatory organization. In this position, my responsibilities include helping develop AT&T ILECs’

positions on certain issues for Wholesale Marketing, and ensuring that those positions are consistently articulated in proceedings before state commissions.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

A. BellSouth Telecommunications, LLC d/b/a AT&T Kentucky, which I will refer to as AT&T Kentucky.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY REGULATORY PROCEEDINGS?

A. Yes. I have filed testimony and/or appeared in regulatory proceedings in many of the states where AT&T ILECs provide local service, including Kentucky.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to inform the Commission of AT&T Kentucky's position in this proceeding. AT&T Kentucky's position is based primarily on the law, and I am not a lawyer. This testimony summarizes at a high level AT&T Kentucky's position as I understand it from counsel. Attachment JSM-1 to my testimony is a statement of AT&T Kentucky's position, prepared by counsel, which provides the detailed legal basis for that position.

Q. WHY IS AT&T KENTUCKY PRESENTING ITS LEGAL POSITION NOW, AT THE TESTIMONY STAGE OF THE PROCEEDING, RATHER THAN IN THE LEGAL BRIEF THAT WILL BE FILED LATER?

A. Because it provides context for my testimony and it is important for the Commission to understand at this stage of the proceeding what AT&T Kentucky's position is.

Q. DO YOU ATTEST TO ANY FACTS IN YOUR TESTIMONY?

A. Yes. AT&T Kentucky's position is based in part on certain facts concerning interconnection agreements ("ICAs") between AT&T Kentucky and the members of CompSouth that are participating in this proceeding, and I testify to those facts.

Q. WHAT IS YOUR UNDERSTANDING OF THE NATURE OF THIS PROCEEDING?

A. CompSouth has asked the Commission "[p]ursuant to 807 KAR 5:001, Section 19" to issue a declaration that "regardless of underlying technology, transmission media, or protocol that may be used for the exchange of voice traffic over two carriers' networks, (a) the interconnection regimes under 47 U.S.C. §§ 251-252 and KRS 278.530 apply, and (b) these statutes permit (among other things) a requesting carrier to file a petition with the KPSC requesting an Order prescribing the rates, terms and conditions of proposed interconnection with an incumbent local exchange carrier."¹ The Commission has established a schedule to allow it to consider that request.

Q. COMPSOUTH'S REQUEST REFERS TO THE INTERCONNECTION REGIME UNDER 47 U.S.C. §§ 251-252. WHAT IS THAT?

A. That is a reference to sections of the federal Telecommunications Act of 1996, which I will refer to as the FTA.

¹ Application of Competitive Carriers of the South, Inc. for a Declaratory Order (Aug. 14, 2015) ("Application"), at 1.

Q. WHAT IS AT&T KENTUCKY'S POSITION CONCERNING COMPSOUTH'S REQUEST FOR A DECLARATION CONCERNING THE INTERCONNECTION REGIME UNDER THE FTA?

A. The Commission should deny that request. CompSouth made the request pursuant to 807 KAR 5:001, Section 19, but that statute only authorizes the Commission to issue declarations concerning Kentucky law, not federal law. The Commission can only do what it is authorized to do by Kentucky law, and no Kentucky law authorizes the Commission to issue a declaratory order concerning the FTA.

Q. IS AT&T KENTUCKY SAYING THE COMMISSION CANNOT MAKE DECISIONS ABOUT HOW THE INTERCONNECTION REQUIREMENTS IN THE FTA SHOULD BE APPLIED?

A. No. The FTA contemplates that State commissions will arbitrate interconnection agreements, and that in doing so, they will make decisions about how the interconnection requirements (and the other requirements) in the FTA are to be applied. This Commission has done that in the past, and it will presumably do so in the future. But this is not an ICA arbitration; it is a proceeding on CompSouth's request for a declaratory order pursuant to a Kentucky statute, and, as explained in Attachment JSM-1, neither that statute nor any other Kentucky law permits the Commission to issue a declaratory order concerning how the FTA should be or will be applied.

Q. COMPSOUTH'S REQUEST ALSO REFERS TO THE INTERCONNECTION REGIME UNDER KRS 278.530. WHAT IS AT&T KENTUCKY'S POSITION CONCERNING THAT PART OF THE REQUEST?

A. Again, I will summarize AT&T Kentucky's position based on input from counsel; the detail is provided in Attachment JSM-1.

Unlike the interconnection provisions in the FTA, the interconnection provisions of KRS 278.530 are within the scope of the Commission's declaratory order authority

under 807 KAR 5:001. As Staff has noted, however, relief is available under KRS 278.530 only when the carrier requesting interconnection has no existing contract or interconnection with the carrier with which interconnection is sought. Here, all the carriers represented by CompSouth have ICAs with AT&T Kentucky *and* have established interconnections between their networks and AT&T Kentucky's pursuant to those ICAs. Indeed, CompSouth has not asserted, and cannot assert, that AT&T Kentucky has denied a request for interconnection made by any of its participating members. Consequently, none of the participating CompSouth carriers could possibly obtain relief under KRS 278.530, so none of them would be "substantially affected," as 807 KAR 5:001 requires, by any declaration the Commission might make concerning that statute. Therefore, the Commission should deny CompSouth's request for a declaration with respect to the state interconnection statute as well as the FTA.

Q. WHAT IS AT&T KENTUCKY'S POSITION ON WHETHER THE FTA AND/OR KRS 278.530 APPLY TO INTERCONNECTION IN INTERNET PROTOCOL FORMAT?

A. AT&T incumbent local exchange carriers ("ILECs") in other proceedings that I have been involved in have argued that the FTA does not require IP interconnection, and that remains the AT&T ILECs' position. In this proceeding, however, AT&T Kentucky does not advocate a position one way or the other on the questions CompSouth has raised. AT&T Kentucky believes the law is very clear that the Commission cannot and should not answer those questions in this proceeding, and therefore asserts no position on those questions here.

Q. YOU SAID THAT YOU WOULD TESTIFY ABOUT CERTAIN FACTS. WHAT ARE THOSE FACTS?

A. The facts relate to CompSouth's request for a declaratory order concerning the scope of KRS 278.530, which, as I stated above, should be denied because none of the participating CompSouth members would be "substantially affected" by such an order. The following facts support that conclusion:

Three CompSouth members are participating in this proceeding: Birch Communications, Inc. ("Birch"); Level 3 Communications, LLC ("Level 3"); and Windstream Communications, Inc. ("Windstream").² Each of those carriers has an ICA with AT&T Kentucky pursuant to which it is entitled to obtain interconnection with AT&T Kentucky's network. I have examined these ICAs, and each of them is in effect now and will remain in effect until one party or the other terminates it. None of the ICAs has been terminated, and none of the participating CompSouth members has requested negotiation of a new ICA.

All of the participating CompSouth members have existing interconnections with AT&T Kentucky pursuant to their ICAs with AT&T Kentucky.

None of the participating CompSouth members has requested IP interconnection with AT&T Kentucky.

AT&T Kentucky has not refused the request of any participating CompSouth member to establish interconnection.

² Application ¶ 1 lists, in addition to those three carriers, XO Communications, LLC ("XO") and EarthLink Business, LLC ("EarthLink"). However, XO has since withdrawn (see August 29, 2016, Notice of Withdrawal) and Earthlink is no longer a member of CompSouth (see Testimony of Joseph Gillan on behalf of CompSouth at 1 n.1.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

APPLICATION OF COMPETITIVE CARRIERS OF)	
THE SOUTH, INC. FOR A DECLARATORY ORDER)	CASE NO.
AFFIRMING THAT THE INTERCONNECTION)	2015-00283
REGIMES UNDER KRS 278.530 AND 47 U.S.C. § 251)	
ARE TECHNOLOGICALLY NEUTRAL)	



VERIFICATION OF J. SCOTT McPHEE

STATE OF CALIFORNIA)
)
COUNTY OF CONTRA COSTA)

J. Scott McPhee, being duly sworn, states that he has read the foregoing prepared direct testimony and that he would respond in the same manner to the questions if so asked upon taking the stand, and that the matters and things set forth therein are true and correct to the best of his knowledge, information and belief.


_____)
J. Scott McPhee

The foregoing Verification was signed, acknowledged and sworn to before me this 20th day of October, 2016, by J. Scott McPhee.


_____) 
NOTARY PUBLIC, Notary # _____
Commission expiration: _____

 Please see attached for California Jurat with Affiant Statement.

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Contra Costa

Subscribed and sworn to (or affirmed) before me on this 20th day of October, 2016, by John Scott Mcphee, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(Seal)

Notary Signature

[Handwritten Signature]

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Descripton of Attached Document

Title or Type of Document: Direct Testimony Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____