

**BEFORE THE KENTUCKY
PUBLIC SERVICE COMMISSION**

In the matter of

Application of Competitive Carriers of the)	
South, Incl. 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)	

**AT&T KENTUCKY’S MOTION TO STRIKE COMPSOUTH’S MOTION TO COMPEL,
SUSPEND PROCEDURAL SCHEDULE, CONVENE A STATUS CONFERENCE, AND
REQUEST FOR EXPEDITED RULING**

CompSouth¹ has violated or ignored the Commission’s rules and orders in at least three material respects. First, it filed a motion to compel AT&T² to respond to its Requests for Information (RFI) without making any effort to resolve discovery disagreements with AT&T as required by the Commission’s rules.³ Second, it failed to file rebuttal testimony by the December 7, 2016 deadline established by the Commission.⁴ Third, instead of seeking prior Commission approval to modify the existing procedural schedule, it resorted to self-help by asserting that the deadline for filing its rebuttal testimony should be extended until after the Commission rules on its motion to compel.

The Commission’s response to CompSouth’s violations can and should be straightforward. It should strike CompSouth’s motion to compel and rule that the motion cannot be renewed unless and until it includes the required description of the efforts CompSouth has made to resolve its discovery disagreements with AT&T. The Commission also should suspend the current procedural schedule and convene a status conference so the parties and the

¹ Competitive Carriers of the South, Inc.
² BellSouth Telecommunications, LLC d/b/a AT&T Kentucky.
³ See 807 KAR 5:001, Section 4(12)(e); Section I below.
⁴ See Order entered August 9, 2016, Appendix.

Commission can discuss how to proceed in light of the procedural problems created by CompSouth's actions. Finally, the Commission should rule on AT&T's motion to strike by December 12, 2016. If CompSouth's motion to compel had complied with the Commission's rules, AT&T's response would have been due on December 14. AT&T should not be expected to respond to CompSouth's motion as filed because, had CompSouth followed the rules, some of the issues CompSouth is raising could have been resolved through discussions. Alternatively, and at a minimum, the Commission should suspend the due date for AT&T's response to the motion to compel until after the Commission has ruled on AT&T's motion to strike.

I. Motion to Strike CompSouth's Motion to Compel

CompSouth's motion to compel purports (at p. 1) to be "pursuant to 807 KAR 5:001 Section 4." Section 4 requires only three things of a party moving to compel discovery: (i) "a description of the information requested"; (ii) "[t]he reasons why it is relevant to the issues in the case"; and (iii) "***[t]he efforts taken to resolve any disagreement over the production of the requested information.***" (Emphasis added). Significantly, CompSouth's motion refers to "negotiations that have taken place over the past nineteen days" between it and CBT⁵ regarding a confidentiality agreement (*see* Motion at 11), but it makes no mention of any discussion, negotiation, or other efforts with AT&T – because there were none. In the fourteen days since being served with AT&T's responses to its RFI, CompSouth has made no effort whatsoever to resolve any disagreement over the production of the requested information, in blatant violation of the Commission's rule.

CompSouth's violation of this rule is not a mere technical glitch. On the contrary, the rule CompSouth violated serves an obvious and eminently sound purpose: to narrow

⁵ Cincinnati Bell Telephone Company, LLC.

disagreements and minimize the need for agency intervention. In AT&T's experience, "meet and confer" discussions often yield at least some compromise and almost always narrow the issues that are presented to the agency for resolution.

Indeed, CompSouth itself recognizes room for compromise. At page 3 of its Motion, for instance, CompSouth narrows its requests 3, 4 and 5 (all of which concern IP interconnection agreements to which an AT&T affiliate is a party) to "clarify that it is only requesting agreements by an affiliate that address traffic originating or terminating to AT&T's customers." This concession is intended to strengthen CompSouth's motion by curing a defect in those requests as originally submitted. But if CompSouth thinks this is a reasonable compromise to offer the Commission, it should have discussed it to AT&T before filing its motion.

Similarly, CompSouth states (at 4, n.3) that it is not pursuing some of its requests "in the interest of judicial economy," etc. – all of which is transparent code for "in the interest of strengthening the motion by leaving out some of the least defensible requests." Clearly, CompSouth was willing to abandon some of its requests in the hope of having other requests fulfilled, and there likely are other requests that could be abandoned, clarified, or otherwise negotiated. Thus, the very compromises that CompSouth tenders in its own motion neatly illustrate the already evident proposition that discovery disagreements are susceptible of compromise, which is why the Commission's rules require a potential movant to make efforts to resolve those disagreements before filing a motion to compel.

Because CompSouth's motion to compel indisputably violates 807 KAR 5:001, Section 4(12)(e), the Commission should strike it immediately. CompSouth can then make the efforts to resolve the parties' discovery disagreements that the rule requires and then, if need be, it can file

a motion – in all likelihood a more limited one – including the mandatory statement concerning those efforts.

II. Motion to Suspend Procedural Schedule and Convene Status Conference

In response to CompSouth's motion to extend the procedural schedule, AT&T requests that the Commission suspend the procedural schedule in its entirety and schedule a status conference in order to discuss a revised schedule. CompSouth not only failed to confer about discovery, as the rules require, but also failed to ask in advance for an extension of the due date for its rebuttal testimony. Instead, CompSouth resorted to self-help by waiting until its testimony was due, and only then asking for an extension, based on the excuse that it had not received all the information it requested. This excuse is suspect at best, given that the testimony CompSouth failed to file was supposed to rebut testimony already filed by intervenors, which CompSouth has had for at least six weeks.⁶

Additionally, CompSouth knew everything it needed to know about AT&T's (and Verizon's) discovery responses and objections on November 23. Among other things, in the subsequent two weeks CompSouth could have: conferred with AT&T and Verizon about their responses to the RIF; suggested a possible joint motion to extend the time for filing its rebuttal testimony until any remaining discovery disagreements were resolved; filed its own motion seeking an adjustment of the rebuttal filing date; or filed its rebuttal testimony as scheduled while reserving the right to move to file supplemental testimony, if appropriate, upon resolution of the discovery disagreements. Instead, CompSouth took the least defensible course of action:

⁶ At least arguably, any portion of rebuttal testimony that does not rebut intervenor testimony is improper. That means that in order for the information CompSouth seeks from AT&T to be usable in CompSouth's rebuttal testimony, the information would have to directly counter something an intervenor witness said in testimony. Since AT&T's testimony focused solely on the Commission's lack of authority to issue the declaratory ruling CompSouth seeks, and not at all on IP interconnection, it is extremely unlikely that any information AT&T might provide in response to CompSouth's discovery requests – all of which had to do with IP interconnection – could be used to rebut AT&T's testimony.

it waited until its rebuttal testimony was due, filed no testimony, and asked the Commission to forgive its non-compliance by altering the procedural schedule the Commission had established.

AT&T, therefore, requests a status conference so the parties and the Commission can discuss how to proceed in light of the procedural problems created by CompSouth's actions.

III. Request for Expedited Ruling

Pursuant to 801 KAR 5:001, Section 5(2), AT&T's response to CompSouth's motion to compel would be due, if at all, by December 14, 2016. AT&T should not be expected to prepare a response to a motion that violates the Commission's rules and, therefore, should not have been filed in the first place. Accordingly, AT&T requests that the Commission rule on AT&T's motion to strike by December 12, 2016, or, in the alternative, suspend the due date for AT&T's response, if any, to CompSouth's motion to compel until after the Commission has ruled on AT&T's motion to strike.

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 December 9, 2016; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

/s/ Cheryl R. Winn