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October 12, 2015

Jeff R. Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: Case No. 2015-00283

Dear Mr. Derouen,

Pursuant to the Commission's Order in the above-styled case, as well as 807 KAR 5:001, Section 19 *et seq.*, please find enclosed the response from MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services LLC ("Verizon") to the application for declaratory order filed by Competitive Carriers of the South, Inc. on August 14, 2015.

Also enclosed is Verizon's Motion to Intervene in this action.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Luke Morgan

Enclosures

cc: Katherine Yunker, Esq.
Carolyn Ridley, Esq.

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) Case No. 2015-00283
The Interconnection Regimes under KRS 278.530)
and 47 U.S.C. § 251 are Technology Neutral)

**VERIZON RESPONSE TO COMPSOUTH
APPLICATION FOR DECLARATORY ORDER**

IP VoIP interconnection offers efficiencies to providers and consumers. That is why the incumbent local exchange carrier (“ILEC”) affiliates of MCI Communications Services, Inc. d/b/a Verizon Business Services¹ in other states have pursued commercial VoIP² interconnection agreements with other providers. But many providers, like the participating Competitive Carriers of the South, Inc. (“CompSouth”) members, seem more interested in asserting there is a problem only regulators can solve, rather than negotiating actual agreements. There is no such problem. The FCC reiterated just last week that it has not mandated IP VoIP interconnection, leaving negotiation of commercial agreements to be the best way for handling such issues. Rather than allowing CompSouth to circumvent the FCC’s decision on this matter of national importance, the Commission should deny CompSouth’s Application and encourage the parties to negotiate commercial agreements.

I. Market-Based Incentives Lead Providers to Negotiate Commercial IP Interconnection Arrangements for VoIP Traffic.

The market-based incentives for providers to enter into IP interconnection arrangements have grown strong as consumers overwhelmingly shift away from legacy TDM³-based voice

¹ Verizon and its ILEC affiliates are referred to collectively as “Verizon”.

² VoIP and IP herein refer generally to voice (and multimedia) over internet protocol.

³ TDM refers to time division multiplexing.

services towards advanced and wireless services. It makes business sense for providers to pursue these arrangements, especially for voice traffic that is IP on both ends and does not require a protocol conversion for end users to communicate. This market-led transition to IP interconnection for VoIP has been underway for years, going back to the transition to IP exchange of interexchange voice traffic. That transition occurred because many companies transported interexchange traffic in their own networks in IP format and thus had natural incentives to exchange that traffic with others without any conversions.

Verizon's experience bears out both the natural evolution of interconnecting networks and the results of providers acting on market-based incentives to interconnect efficiently. In 2012, Verizon and Comcast entered into a commercial agreement for the exchange of VoIP traffic. The parties spent about a year negotiating detailed technical issues. Building off of the lessons learned implementing that agreement, Verizon began sending letters to providers who may be interested in VoIP interconnection in June 2013. By 2014, Verizon had completed a commercial agreement with Vonage, which touted its "groundbreaking IP interconnection agreement" with Verizon as one that "will allow both Verizon and Vonage customers to enjoy the quality of service and cost benefits that come from the IP exchange of traffic, including the potential to offer subscribers services that rely on end-to-end IP networks"⁴

In addition to Comcast and Vonage, Verizon has since reached commercial agreements with other companies of differing sizes and types, such as Bandwidth.com, Millicorp, Intermetro, Broadvox, BrightLink, and 365 Wireless. Most recently, Sprint reached agreements with Verizon ILECs and Verizon Wireless. Sprint also reached a commercial resolution with AT&T

⁴ Comments of Vonage Holdings Corp., *Numbering Policies for Modern Communications*, WC Docket 13-97; *et al.*, at 2-3 (FCC Mar. 4, 2014).

that led Sprint to file an interconnection agreement in Michigan that omitted the IP VoIP interconnection language that the state commission had approved,⁵ to dismiss with prejudice its appeal of the Illinois commission's decision in favor of AT&T on this issue,⁶ and to withdraw with prejudice this issue from its arbitration before the Indiana commission.⁷

These commercial agreements were established *outside* of the federal Telecommunications Act 1996 § 252 process for creating interconnection agreements. That process was enacted twenty years ago for a communications market that looked very different from today's robustly competitive and intermodal market. In 1996, ILECs offering PSTN service were the predominant providers of local telephone service; CLECs were brand new entrants; cable telephony and VoIP did not exist; wireless service was still in its infancy; and a host of new IP-based communications options — such as Twitter, iMessage, and Facebook — were still over the horizon. Today, ILECs are just one of many players in the communications marketplace, with no special historical advantages in the provision of VoIP services. Indeed, the

⁵ Joint Submission at 1-2, *Request for Commission Approval of an Interconnection Agreement Between Sprint Spectrum L.P. and AT&T Michigan*, Case No. U-17569 (Mich. P.S.C. filed Feb. 25, 2014), available at <http://efile.mpsc.state.mi.us/efile/docs/17569/0001.pdf>. Only after the Michigan commission rejected Sprint's and AT&T's attempt to file an interconnection agreement that omitted the arbitrated language did Sprint and AT&T file an agreement that contained the language the commission had ordered.

⁶ See Stipulation of Dismissal of Count V of Plaintiffs' Complaint, *SprintCom, Inc. v. Scott*, No. 1:13-cv-06565 (N.D. Ill. filed Feb. 28, 2014).

⁷ Joint Submission Concerning the Schedule for this Proceeding, *Sprint Spectrum, L.P.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable Laws for Rates, Terms and Conditions of Interconnection with Indiana Bell Telephone Company d/b/a AT&T Indiana*, Cause No. 44409-INT 01 (Ind. Util. Reg. Comm'n filed Aug. 11, 2014)

latest FCC Local Competition Report available shows that ILECs served only 14.75 percent of the total VoIP subscribers in Kentucky.⁸

The Verizon affiliates' commercial agreements were established in accordance with the FCC's expectation that companies will negotiate IP VoIP interconnection in good faith in response to a request.⁹ But although these facts demonstrate that companies willing to negotiate can reach commercial agreements without regulatory intervention, many providers have not been willing to try. And the very pendency of this proceeding harms Kentucky consumers, as it gives companies like the participating CompSouth members a reason *not* to reach agreements for IP VoIP interconnection, to avoid undermining their regulatory position in this matter.

Negotiated commercial agreements are the most effective way to ensure efficient interconnection arrangements for VoIP traffic. They allow providers to negotiate network configurations that best accommodate their underlying networks. And both parties to IP VoIP interconnection arrangements obtain enormous efficiencies and can provide significant benefits to their consumers.¹⁰ It is more efficient for two VoIP providers to exchange traffic in IP format because it allows the providers to exchange traffic at a small number of mutually agreed upon points of interconnection for the entire country.

The Application nevertheless misleadingly suggests that IP interconnection is more efficient for all traffic, although that is not always the case. For traffic between two IP end

⁸ See See Industry Analysis and Technology Division, FCC, *Local Telephone Competition : Status as of December 31, 2013*, at Table 9 (Oct. 2014), https://apps.fcc.gov/edocs_public/attachmatch/DOC-329975A1.pdf.

⁹ See *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Red 17663, ¶ 1011 (2011), *pets. for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2072 (2015) (“*ICC Reform Order*”).

¹⁰ See, e.g., Comments of Sprint Nextel Corporation, *Connect America Fund*, WC Docket No. 10-90, *et al.*, at 12 (FCC filed Feb. 24, 2012).

points that is exchanged over a legacy TDM interconnection arrangement, IP interconnection can be more efficient by eliminating the two IP/TDM conversions that occur today. However, for traffic between an IP end point and a TDM end point, there is no way to avoid a conversion from one protocol to the other to complete a call. For this traffic, IP interconnection will not eliminate the necessary IP/TDM conversions. In order to best capture the efficiencies of IP interconnection, service providers need to coordinate the migration of traffic from TDM interconnection to IP interconnection with the conversion of legacy TDM end user services to IP end user services. Such coordination efforts can best be accomplished through individual commercial negotiations.

II. This Commission Should Not Impose Inefficient, State-Specific Rules on National Interconnection Agreements.

Just last week, in a brief to the DC Circuit Court of Appeals, the FCC reiterated, “It is unsettled whether VoIP providers themselves have a right to interconnection under section 251 of the Communications Act.”¹¹ And earlier this year, the FCC in an order “decline[d] to mandate [IP VoIP interconnection] arrangements, as the Commission currently is considering the appropriate policy framework for VoIP interconnection in pending proceedings.”¹² Given the absence of guidance from the FCC about how, if at all, the legacy interconnection rules that the FCC adopted for TDM interconnection should be extended to IP VoIP interconnection arrangements that are being established for the nationwide exchange of traffic without regard to state boundaries, this Commission should not move out in front of the FCC on this issue.

State-by-state regulation of IP VoIP interconnection under Section 252 of the federal Communications Act would impose inefficient and conflicting rules on nationwide

¹¹ FCC Brief for Respondents, *AT&T v FCC*, Case No. 15-1059 (DC Cir Oct. 5, 2015).

¹² *Numbering Policies for Modern Communications*, 30 FCC Rcd 6839, ¶ 50 (2015).

arrangements, harming Kentucky consumers. For example, the FCC's legacy TDM interconnection rules contain requirements, such as the requirement to interconnect at one point per LATA, that are sensible for TDM interconnection but would be inefficient if extended to IP VoIP interconnection. That inefficiency would deprive Kentucky consumers of the benefits of such interconnection. Although the FCC has the authority to amend the federal TDM interconnection rules — if it were to find that any of them should be extended in modified form to IP VoIP interconnection arrangements — this Commission has no such authority. And even with nearly two decades of experience applying § 251(c)(2) and the FCC's rules to TDM interconnection, state commissions continue to reach different results when arbitrating disputes about the terms of interconnection agreements. Such conflicting rulings would be especially harmful to national IP VoIP interconnection arrangements, which can use as few as two points of interconnection to exchange VoIP traffic nationwide.

III. Neither Federal Nor Kentucky Law Require Interconnection in a Specific Format.

The FCC has already held in multiple orders that all LECs, including rural LECs, have an obligation to accept IP-originated voice traffic, and, more generally, information services traffic.¹³ This requirement has helped VoIP service to flourish. But the issue here is whether the Communications Act requires LECs to accept that traffic in a particular format, namely IP format. It does not.

¹³ See *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, As Amended*, Declaratory Ruling, 26 FCC Rcd 8259, ¶ 11 (2011); *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513, ¶ 8 (2007); *MTS and WATS Market Structure*, Memorandum Opinion and Order, 97 F.C.C.2d 682, ¶¶ 75-76 (1983); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, ¶ 251 n.625 (1996) (describing prior orders).

The FCC has never interpreted § 251(c)(2) either to allow a CLEC to demand interconnection in any particular format (IP or otherwise) or to require interconnection for the exchange of traffic that never touches the PSTN. The duty in § 251(c)(2) is limited to interconnection with a “requesting telecommunications carrier” that is “for the transmission and routing of telephone exchange service and exchange access” — that is, for telecommunications services.¹⁴ And retail VoIP services are information services, not telecommunications services, for two reasons. First, retail VoIP services offer customers a single, integrated suite of features and capabilities that allow them to “generat[e], acquir[e], stor[e], transform[], process[], retriev[e], utiliz[e], or mak[e] available information via telecommunications.”¹⁵ Second, retail interconnected VoIP services are information services for the independent reason that they offer customers the *capability* of a net protocol conversion from IP to TDM or from TDM to IP. Although no net protocol conversion occurs when traffic between two VoIP customers is exchanged in IP format, the relevant fact for classification purposes is whether VoIP services include that capability.

An agreement to interconnect in IP format for the exchange of VoIP traffic thus is *not* an agreement for the “transmission and routing of telephone exchange service and exchange access.”

CompSouth relies on the FCC’s statement in the *ICC Reform Order* that the “interconnection requirements [of Section 251 of the Act] are technology neutral.”¹⁶ But the FCC was referring to § 251 as a whole, and § 251 contains two interconnection duties: one, in

¹⁴ 47 U.S.C. § 251(c)(2)(A).

¹⁵ 47 U.S.C. § 153(24).

¹⁶ *ICC Reform Order* ¶ 1342.

§ 251(a), that applies to all telecommunications carriers and that is not implemented through § 252 interconnection agreements, and one, in § 251(c)(2), that applies only to ILECs and is implemented through § 252 interconnection agreements. When the FCC later discussed § 251(a) specifically, it made clear that this is the interconnection requirement that is “technology neutral.”¹⁷ The FCC made no comparable statement about § 251(c)(2) and, moreover, expressly recognized that § 251(c)(2) is not service neutral, is “circumscribed in various ways,” and applies only to “interconnection obtained . . . ‘for the transmission and routing of telephone exchange service and exchange access.’”¹⁸

Moreover, Kentucky law does not mandate LECs to accept that traffic in IP format. While Staff Opinion 2013-015 found KRS 278.530 to be “technology neutral” in that it neither specifies nor excludes types of interconnection based on the underlying technology used, it also made clear that the state does not guarantee the Commission will mandate interconnection in a particular format:

The Commission . . . has interpreted KRS 278.530 to apply to situations where interconnection does not already exist. The Commission has also noted that KRS 278.530 establishes a “procedure to be followed by aggrieved utilities, but does not prescribe the means by which the Commission must investigate and determine fair, just and reasonable rates.” Therefore, Commission Staff concludes that while KRS 278.530 is “technology neutral,” it only applies in the absence of an existing contract or interconnection and does not guarantee what procedure or standard the Commission should apply to reach a determination regarding the terms of interconnection. In short, even if a telephone company files a petition under KRS 278.530 (which has not occurred since 1983), interconnection is not guaranteed.¹⁹

¹⁷ *ICC Reform Order* ¶ 1352.

¹⁸ *ICC Reform Order* ¶¶ 1381, 1389 (quoting 47 U.S.C. § 251(c)(2)(A)).

¹⁹ Staff Opinion 2013-015 (Oct. 24, 2013)(citations omitted).

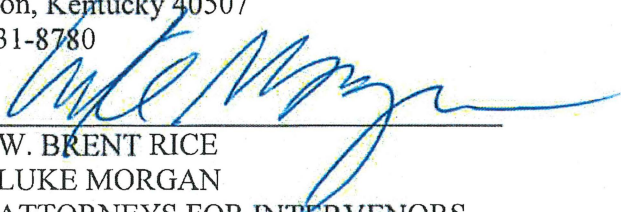
Conclusion

For the foregoing reasons, the Commission should deny CompSouth's for a declaratory ruling.

Respectfully submitted,

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201 East Main Street, Suite 900
Lexington, Kentucky 40507
(859) 231-8780

BY:



W. BRENT RICE
LUKE MORGAN
ATTORNEYS FOR INTERVENORS

AND

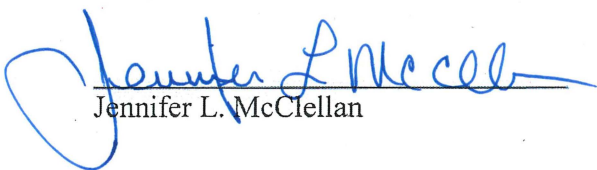
Jennifer L. McClellan
Assistant General Counsel
Verizon Access Transmission Services LLC
703 East Grace Street, 7th Floor
Richmond, VA 23219

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Response was served via U.S. mail, postage pre-paid, this 12th day of October, 2015, upon the following:

Katherine K. Yunker
P.O. Box 21784
Lexington, KY 40522-1784

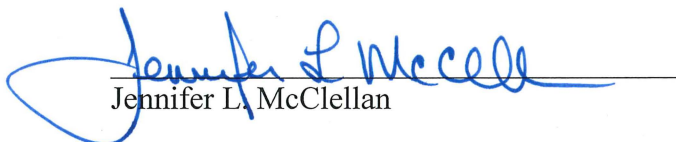
Carolyn Ridley
Senior Director of State Public Policy
Level 3 Communications
2078 Quail Run Dr.
Bowling Green, KY 42104



Jennifer L. McClellan

VERIFICATION

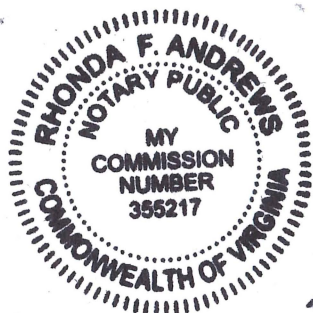
I, Jennifer L. McClellan, Assistant General Counsel, having examined Verizon's Response to CompSouth VoIP Interconnection Application, affirm that the information contained herein is true and accurate to the best of my knowledge and belief, this the 12th day of October, 2015.



Jennifer L. McClellan

NOTARY PUBLIC)
COMMONWEALTH OF VIRGINIA)

Subscribed, sworn to, and acknowledged before me this the 12 day of October, 2015, by NAME.

My Commission Expires: MARCH 31, 2017 .




NOTARY PUBLIC,
COMMONWEALTH OF VIRGINIA

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) Case No. 2015-00283
The Interconnection Regimes under KRS 278.530)
and 47 U.S.C. § 251 are Technology Neutral)

VERIZON MOTION TO INTERVENE

COMES MCImetro Access Transmission Services LLC d/b/a Verizon Access

Transmission Services LLC (“Verizon”), by counsel and pursuant to 807 KAR 5:001 Section 4(11), and moves that it be granted leave to intervene in this matter and that it be granted full intervention status. In support of its motion, Verizon states as follows:

1. The full name and address of Verizon Access Transmission Services LLC is MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services LLC, 22001 Loudoun County Parkway, Ashburn, VA 20147. Verizon is a competitive local exchange company authorized to provide service in the Commonwealth of Kentucky.
2. On September 8, 2015, Competitive Carriers of the South, Inc. (“CompSouth”) filed an application seeking for a declaratory order to determine the interconnection rights of telecommunications carriers that provide voice services using Internet Protocol (“IP”) format. Specifically, CompSouth asked the Commission to declare that: (1) the interconnection regimes under 47 U.S.C. §§ 251-252 and KRS 278.530 apply on a technology-neutral basis; and (2) that 47 U.S.C. §§ 251-252 and KRS 278.530 permit a telecommunications carrier to file a petition with the Commission requesting an Order prescribing the rates, terms, and conditions of a proposed interconnection with an incumbent local exchange carrier (“ILEC”).

3. In its order of September 24, 2015, the Commission ordered that all entities who wish to become parties to this proceeding shall file motions to intervene no later than October 12, 2015.

4. In its order of August 26, 2015, the Commission noted that CompSouth requests Commission action that, if granted “could directly and materially impact all ILECs, as well as any telecommunications provider that interconnects or can interconnect with the ILECs in Kentucky,” including competitive local exchange carriers (“CLECs”) and commercial mobile radio service (“CMRS”) providers.

5. Verizon is a CLEC that interconnects or can interconnect with ILECs in Kentucky. However, it is also affiliated with several ILECs across the country. Those ILECs interconnect with providers pursuant to 47 U.S.C. §§ 251-252. They also provide voice over Internet protocol (“VoIP”) services and have an extensive record of negotiating and entering into nationwide commercial IP VoIP interconnection agreements. As a result, Verizon is unique among the CLECs operating in the Commonwealth who may have an interest in this proceeding, has a special interest in this matter that will not be adequately represented by the other parties, and will be directly impacted by any order issued in this proceeding.

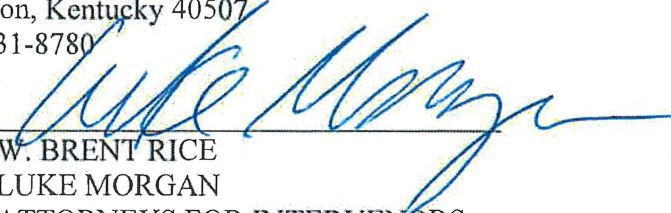
6. Verizon’s participation in this matter is also likely to assist the Commission in developing a full and complete record without unduly complicating or disrupting the proceedings.

WHEREFORE, Verizon respectfully requests that the Commission grant its motion for a full intervention in this proceeding.

Respectfully submitted,

McBRAYER, MCGINNIS, LESLIE & KIRKLAND, PLLC
201 East Main Street, Suite 900
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(859) 231-8780

BY:


W. BRENT RICE
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AND

Jennifer L. McClellan
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Katherine K. Yunker
P.O. Box 21784
Lexington, KY 40522-1784

Carolyn Ridley
Senior Director of State Public Policy
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