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

Reply by Applicant

Competitive Carriers of the South, Inc.

The Applicant, Competitive Carriers of the South, Inc. ("CompSouth"), hereby replies to the responses submitted by MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services LLC ("Verizon"), Cincinnati Bell Telephone Company LLC ("CBTC"), and BellSouth Telecommunications, LLC d/b/a AT&T Kentucky ("AT&T"). CompSouth's Application presents a narrow legal question to the Kentucky Public Service Commission ("PSC") – *i.e.*, whether the interconnection regimes under 47 U.S.C. §§ 251-252 and KRS 278.530 are technology neutral and, therefore, continue to apply as incumbent local exchange carriers ("ILECs") transition to internet protocol ("IP") technology. One of the most important determinants of provisioning competitive local exchange service is the interconnection of a carrier's network with the network of other carriers so that voice traffic can be exchanged. Anticipating technological change over time, the language in §§ 251-252 is technology neutral. As the industry adopts IP technology, competitive local exchange carriers ("CLECs") like CompSouth's members need to be able to interconnect their networks for the exchange of voice traffic regardless of the underlying technology. Uncertainty as to whether long-standing regulatory protections apply to IP voice interconnection substantially affects the members of CompSouth and most other carriers. This Reply will demonstrate that: (a) the Federal Communications Commis-

sion ("FCC") has not preempted the state commissions on IP voice interconnection; (b) this matter is ripe for a Declaratory Ruling by the PSC; and (c) the Staff Opinion should be embraced in a binding Order.

The PSC has Jurisdiction over IP Voice Interconnection Pursuant to State and Federal Statutes.

Analysis of state statutes

1. The declaratory ruling sought is essentially about the PSC's jurisdiction, and the PSC has the authority to determine its jurisdiction over IP voice interconnection pursuant to federal and state laws. The legal question is: Given that the PSC has jurisdiction over "traditional" voice interconnections between carriers, is that jurisdiction lost merely because the voice interconnections are in IP format? That question is a narrow one that the PSC has full authority to address with a declaratory ruling.

2. State statutes give the PSC sweeping authority to regulate public utilities,and are the sole basis of its authority: "The PSC is a creature of statute and has only such powers as granted by the General Assembly."[1] Although federal law or the FCC may give priority or preference to the PSC, as with respect to arbitration or approval under 47 U.S.C. §252(b)(4) or (e), they cannot give the PSC authority that is not granted to it by the Kentucky General Assembly. By its terms, § 252 does not attempt to force any state commission to decide interconnection disputes,[2] but only has the FCC step in if the state commission refuses or fails to fulfill the arbitration or approval function. *See* 47 U.S.C. § 252(e)(5).

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[1] *Boone County Water and Sewer District v. Public Service Commission*, 949 S.W.2d 588, 591 (Ky. 1997); *Public Service Commission v. Jackson Co. Rural Elec. Co-op., Inc.*, 50 S.W.3d 764, 767 (Ky. App. 2000) ("Thus, any issue involving the PSC's authority is necessarily one of statutory analysis.").

[2] Federal laws "conscripting state officers" have been held to be "not in accord with the [U.S.] Constitution." *See Printz v. United States*, 521 U.S. 898, 925 (1997) ("Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs.").

3. The PSC always has the authority to consider and determine its own jurisdiction.[3] The PSC has recognized the importance of such fundamental questions by including "the jurisdiction of the commission" within the express scope of its procedural regulation about declaratory rulings, 807 KAR 5:001, Section 19(1).

4. Respondents nonetheless argue that the PSC cannot address a question of its own jurisdiction if it touches on the scope of 47 U.S.C. §§ 251-252, except through the arbitration of an interconnection agreement. *See* AT&T Rsp. pp. 1, 7-11; CBTC Rsp. p.7. They apparently concede that the PSC can interpret and apply federal statutes, including 47 U.S.C. §§ 251-252, within a §252(b) arbitration proceeding, and make a general, "administrative" determination that applies beyond the specific situation presented[4]; their challenge is only to the procedural mechanism. This attempt to limit PSC jurisdiction to construe federal statutes affecting its own jurisdiction not only is wrong, but is deeply ironic. These Respondents are effectively arguing that that the PSC declare that it is without jurisdiction to issue a declaratory ruling involving interpretation of federal statutes based on a (wrong) interpretation of those very federal statutes.

5. The Respondents do not dispute that the definition of a telecommunications utility in KRS 278.010(3)(e) encompasses providers and their facilities for transmission/conveyance of voice traffic using IP format. *See* CompSouth Application ¶ 8. None argues that the PSC's exclusive and sweeping authority to regulate the rates, terms, and conditions of interconnection

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[3] "[A] quasi-judicial agency such as the PSC, like a Court, has authority, by implication, to determine its own jurisdiction." *City of Greenup v. Public Service Commission*, 182 S.W.3d 535, 538 (Ky. App. 2005) (rejecting position that party's denial of the existence of a contract would "preemptively divest the PSC of jurisdiction").

[4] *See, e.g.*, 4/9/10 Order, Case No. 2009-00438, *Petition of Communications Venture Corporation d/b/a INdigital Telecom for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky pursuant to the Communications Act of 1934, as amended by the Telecommunications Act of 1996*, p.2 (determining as a threshold issue that "competitive access to 91I/E911 services and facilities qualifies for interconnection under Section 251(c) and can be included within a Section 252(b) interconnection agreement").

service for circuit-switched voice traffic[5] somehow ends if the interconnection exchange is instead accomplished by IP protocol. It is thus undisputed that IP voice interconnection is within the scope of the statutory grant of jurisdiction to the PSC.

6. AT&T concedes that KRS 278.530 is "within the scope of the Commission's declaratory order authority," but argues that KRS 278.530 can be applicable only if there is "no existing contract or interconnection with the carrier with which interconnection is sought." AT&T Rsp. p.2; *see also* CBTC p.9. The argument that IP voice interconnection agreements ("ICAs") are thus outside the scope of the PSC's declaratory authority is wrong for at least two reasons. First, KRS 278.530 is the most fitting statutory basis for the PSC's priority role under §§ 251-252. Second, even if the PSC did not exercise its regulatory authority over ICAs through KRS 278.530, it has jurisdiction over such contracts through its statutory authority over the rates and terms of service regardless of whether the mode of its exercise is its oversight of contracts generally or its determination of complaint cases.

7. KRS 278.530 is the natural basis for the PSC's arbitration of ICA terms and conditions under 47 U.S.C. §§ 251-252. PSC jurisdiction is expressly provided for situations in which a telecom utility "refuses to permit" interconnection "upon reasonable terms, rates and conditions." The § 252(c) standards for arbitration by a state commission focus on the §251(c) ILEC obligations, including the duty to provide interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 252(c)(2)(D). KRS 278.530 thus

[5] *See, e.g.* KRS 278.040, .180, .260, .270, .280, .530; *Commonwealth ex rel. Stumbo v. Ky. Public Service Commission*, 243 S.W.3d 374, 378 (Ky. App. 2007) ("the Commission is granted sweeping authority to regulate public utilities pursuant to the provisions of KRS Chapter 278").

is a close substantive parallel to §§ 251-252 by addressing concerns beyond the mere existence of a connection or agreement.[6]

8. AT&T (Rsp. p.2) in effect wants part of the PSC Staff's Opinion 2013-015 to be made binding— *i.e.*, the observation that the PSC "has interpreted KRS 278.530 to apply to situations where interconnection does not already exist" and the conclusion that "while KRS 278.530 is 'technology neutral,' it only applies in the absence of an existing contract or interconnection." PSC Staff Opinion 2013-015 at 4. The 1983 *GTE v. SCB* Order cited by the PSC Staff[7] does not (and cannot) stand for the proposition that disputes about interconnection in a new/different format, or about the terms and conditions of such interconnection, are outside the scope of KRS 278.530. The 1983 *GTE v. SCB* Order merely held that KRS 278.530 could not accomplish what GTE sought in its complaint case against South Central Bell (AT&T's predecessor) — payments it claimed were due because the existing intrastate toll revenues settlement system was allegedly unreasonable, unjustly discriminatory, and unduly preferential.[8] The PSC declined to use KRS 278.530 to retroactively "reform" the parties' existing intrastate toll settlement arrangement, or to provide any retroactive relief: "The Commission has jurisdiction over the subject matter of this complaint, but may only grant prospective relief should a change in the current method of settlements be indicated requiring a revision of the 1970 contract."[9] In arbitrating ICAs under §§ 251-252, the PSC is granting prospective relief about the terms and conditions for interconnection.

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[6] In addition, the proceedings described in KRS 278.530(2) can be harmonized with the § 252(b) arbitration procedures — perhaps more easily than the KRS Ch. 278 mandates for rate/service investigations or complaint cases.

[7] 5/12/83 Order, Case No. 8727, *General Telephone Company of Kentucky v. South Central Bell Telephone Company*.

[8] *Id*. at 5.

[9] *Id*. at 8 (ordering ¶2).

9. If KRS 278.530 had never been enacted, the PSC would nonetheless have jurisdiction under other KRS Ch. 278 provisions to determine reasonable rates, terms, and conditions for voice interconnection — IP and otherwise — with a telecommunications utility. The PSC "shall regulate utilities and enforce the provisions of this chapter" (KRS 278.040(1)); utilities like the ILECs are to "furnish adequate, efficient and reasonable service" (KRS 278.030(2)) and to demand only "fair, just, and reasonable rates for the services rendered or to be rendered by it to any person" (KRS 278.030(1)). The PSC has authority over terms and conditions contained in contracts as well as in tariffs,[10] and has the express mandate to prescribe rates to be followed in the future:

> Whenever the commission, upon its own motion or upon complaint as provided in KRS 278.260, and after a hearing had upon reasonable notice, finds that any rate is unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by order prescribe a just and reasonable rate to be followed in the future.

KRS 278.270 (emphasis added).[11]

10. The PSC has "original jurisdiction over complaints as to rates or service of any utility," and may investigate on its own motion the reasonableness of rates or whether "any service is inadequate or cannot be obtained," KRS 278.260(1). These statutes give a sufficient basis for the PSC's jurisdiction over the terms and conditions of voice ICAs and to arbitrate such agreements under 47 U.S.C. §§ 251-52 that is independent of the provisions of KRS 278.530. Like KRS 278.530, these other statutes are technology-neutral. Respondents do not (and cannot) argue that KRS Ch. 278 confers regulatory authority on the PSC for circuit-switched or TDM

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[10] *See, e.g.*, KRS 278.160(3); 806 KAR 5:011, Section 13.

[11] *See also* KRS 278.180(1) (authorizing the PSC to order a rate change). "Rate" is broadly defined to include services charges but also "any rule, regulation, practice, act, requirement, or privilege in any way relating to such ... charge ... and any schedule or tariff or part of a schedule or tariff thereof." KRS 278.010(12).

interconnections but not for IP voice interconnections. The PSC thus has full and exclusive jurisdiction to perform the responsibilities given in §§ 251-252 to state commissions.[12] Furthermore, state statutes mandate that the PSC exercise the regulatory jurisdiction that it has.[13]

Analysis of federal statutes

11. There is nothing within the text of 47 U.S.C. §§ 251-252 that purports to limit state commissions to interpreting either provision only within the context of a §252(b) arbitration. In fact, §252(f) and (e) respectively provide for state commission approval or rejection of "generally available terms" at the initiative of a Bell operating company and for application of § 251 standards to negotiated ICAs. Respondents do not point to anything within the Telecommunications Act of 1996, FCC regulations, or case law that preempts a state commission from deciding issues about its own jurisdiction.[14] To the contrary, the FCC has encouraged "state commissions to take actions to provide clarity to incumbent LECs and requesting carriers concerning which agreements should be filed for their approval" and to take the lead in determining

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[12] It should also be noted that Kentucky statutes deregulating aspects of telecommunications expressly specify that they "do not limit or modify the duties of a local exchange carrier ... to provide unbundled access to network elements or the commission's authority to arbitrate and enforce interconnection agreements ... to the extent required under 47 U.S.C. secs. 251 and 252...." KRS 278.5462(2) (broadband service); *see also* KRS 278.5462(2) (cellular and other mobile service; "The provisions of this section do not limit or modify the commission's authority to arbitrate and enforce interconnection agreements.").

[13] *See, e.g.,* KRS 278.040(1) (PSC "shall regulate an enforce the provisions of this chapter."); KRS 278.270 (PSC "shall by order prescribe a just and reasonable rate to be followed in the future."); KRS 278.530(2) (PSC "shall make its finding ... and if the commission directs the connection to be made shall indicate ... the terms and conditions and the rates to be charged.").

[14] A complete analysis of a state commission's responsibility to ensure that IP interconnection agreements are filed and available for opt-in under § 252 is detailed in the attached white paper, "The Importance of Section 252 to Competition and the Public Interest: The Continuing State Role in the Age of IP Networks" (October 2015).

"which sorts of agreements fall within the scope of the statutory standard...."[15] Such a categorical analysis is, by definition, unrelated to a particular arbitration proceeding.

12. CompSouth acknowledges that the FCC has not issued an Order that directly answers whether §§ 251-252 apply to calls that are exchanged in IP format. It is equally true, however, that the FCC has not issued any order that exempts calls exchanged in IP format from the requirements of §§ 251-252, and it has certainly taken no action that would preempt the requirements of KRS Ch. 278. To the contrary, as explained in ¶¶ 13-14 below, the FCC has already explicitly concluded that all VoIP-to-PSTN, PSTN-to-VoIP, and VoIP-to-VoIP calls are subject to § 251 (which unambiguously implicates § 252) when the traffic is exchanged in TDM, and none of the ILECs has offered a theory as to why the format of these calls at the point of exchange could possibly alter this conclusion. Unlike the Respondents, CompSouth does not ask that the PSC conduct its legal analysis by interpreting the absence of an FCC Order; its Application is grounded in the text of 47 U.S.C. §§ 251-252 and the decisions that the FCC has chosen to make.

13. Despite their opposition to CompSouth's Application, the ILECs offer little or no analysis concerning whether §§ 251-252 are technologically neutral. Only Verizon attempts to make substantive arguments. It first claims (Rsp. p.7) that VoIP services are "information services" and therefore exempt. Importantly, in the ICC Transformation Order, the FCC has already rejected the argument that VoIP calls are exempt from 251, clearly finding that such services are covered by § 251(b)(5):[16]

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[15] *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, Memorandum Opinion and Order, FCC 02-276 (rel. October 4, 2002), at ¶¶ 10, 11 (emphasis added).

[16] *In the Matter of Connect America Fund,* WC Dkt. No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011), at ¶ 954 (footnotes omitted).

> Although the Commission has not classified interconnected VoIP services or similar one-way services as "telecommunications services" or "information services," VoIP-PSTN traffic nevertheless can be encompassed by section 251(b)(5).

The FCC's treatment of of VoIP-PSTN traffic in the ICC Transformation Order and elsewhere[17] make clear that §251(b)(5) applies to every combination of TDM or IP formats at the end-point of a call. Thus, the VoIP services themselves are subject to §§ 251-252, whether or not they are information or telecommunication services. Verizon's rationale that the claimed "net protocol conversion" changes the nature of the call is equally at odds with the FCC's approach. As noted, even though a VoIP-to-PSTN and PSTN-to-VoIP call each involves a "net protocol conversion" according to Verizon,[18] the FCC has already confirmed that both are subject to § 251(b)(5).

14. It is true that the FCC did not reach a finding in the ICC Transformation Order as to whether voice traffic exchanged in IP format would also fall under § 252, but if the end-points of the call have no bearing on the analysis, then the only possible source of a transformative change that would exempt a voice call from §§251-252 must occur somewhere between the end points. Yet in the IP-in-the-Middle Order, the FCC has previously made clear that exchanging traffic in IP format is not a defining event when the FCC concluded that IP transport could be provided by one or more providers (which would require an exchange of traffic), but that did not change the classification of the call.[19]

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[17] *See, e.g.,* 47 C.F.R. § 51.913(a)(1) (The VoIP-PSTN category encompasses traffic exchanged in TDM format that "originates and/or terminates in IP format.") (emphasis added).

[18] Moreover, if the capability of a call having a loop-format at the end of the call (*i.e.,* VoIP-to-PSTN) caused the VoIP service to be an information service, the logic holds with equal force to all PSTN-VoIP calls, which would transform the entire voice network to an information service — because every call today can potentially end at a phone served by a different technology.

[19] Order, *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97 (rel. Apr. 21, 2004), ¶ 1

15. Verizon's second argument (Rsp. pp. 7-8) contends that while §251(a) is technology neutral, §252(c)(2) is not. Verizon acknowledges (*id*. p.7), however, the FCC's observation in the ICC Transformation Order (¶ 1342) that:

> [S]ection 251 of the Act is one of the key provisions specifying interconnection requirements, and that its interconnection requirements are technology neutral — they do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks.

Verizon even admits that the reference is to § 251 as a whole (Rsp. p.7), but then ignores the express reference to interconnection requirements (plural) by constructing an argument that tries to limit technology neutrality to one subsection of § 251. Verizon notes that although the FCC repeated the conclusion about neutrality for § 251(a), the FCC did not repeat the conclusion specifically with regard to § 251(c)(2). Thus, according to Verizon, the PSC is to ignore the FCC's observation that the interconnection requirements of § 251 "are technology neutral" and conclude somehow that the observation cannot apply to § 251(c)(2) or any part of § 251 other than subsection (a).

16. Verizon's theory that only § 251(a)(1) is technology neutral is based on a later remark, in ¶ 1352 of the ICC Transformation Order, that § 251(a) is technology neutral when addressing whether the FCC "should utilize section 251(a)(1) as the basis for the requirement that all carriers must negotiate in good faith in response to a request for IP-to-IP interconnection." There is simply nothing about the FCC repeating its "technology neutral" conclusion in this paragraph that suggests in any way that its earlier finding concerning section 251 applies only to § 251(a). Indeed, Verizon itself admits that the finding in ¶ 1342 referred to "§ 251 as a whole, and § 251 contains two interconnection duties." Response pp. 7-8.

17. Moreover, the FCC did not limit its conclusion that the interconnection obligations of § 251 are technology neutral to a single reference in the ICC Transformation Order. To

the extent that repetition is necessary (as Verizon claims), we direct the PSC's attention to ¶ 1381 and footnotes 2507-08:

> We agree with commenters that "nothing in the language of [s]ection 251 limits the applicability of a carrier's statutory interconnection obligations to circuit-switched voice traffic"[2507] and that the language is in fact technology neutral.[2508]
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> [2507] *COMPTEL USF/ICC Transformation NPRM* Comments at 5. "The Commission has already determined that Section 251 entitles telecommunications carriers to interconnect for the purpose of exchanging VoIP traffic with incumbent LECs and that a contrary decision would impede the development of VoIP competition and broadband deployment." *Id*. at 6 (citing *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*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513, 3517, 3519-20, paras. 8, 13 (2007) (*Time Warner Cable Order*)).
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> [2508] *See, e.g., XO USF/ICC Transformation NPRM* Reply at 5-6 ("Despite protestations of the ILECs, the interconnection obligations of sections 251 and 252 are technology neutral and not targeted to apply only to legacy TDM networks that existed at the time the Telecommunications Act was passed.").

18. Finally, we note that Verizon's claim that § 251(a) is implemented only through a "commercial agreement" (Rsp. p.8) is directly contradicted by the Time Warner Cable Order,[20] which was referenced above in ICC Transformation Order footnote 2507:

> We also clarify that the rural incumbent LECs' obligations under sections 251(a) and (b) can be implemented through the state commission arbitration and mediation provisions in section 252 of the Act. Finally, we reaffirm that providers of wholesale telecommunications services enjoy the same rights as any other telecommunications carrier under sections 251(a) and (b) of the Act. We believe the guidance provided in this Declaratory Ruling is necessary to remove substantial uncertainty regarding the scope of sections 251 and 252 in state commission proceedings.

Thus, although the FCC has not issued an Order directly answering whether §§ 251-252 apply to IP voice interconnection, decisions such as the IP-in-the Middle, ICC Transformation, and Time

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[20] Order, *In the Matter of Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption pursuant to Section 253 of the Communications Act, as amended*, WC Docket No. 10-143, 26 FCC Rcd 8259 (rel. May 26, 2011) at ¶2 (footnotes omitted).

Warner Cable Orders clarify that the obligations of §§ 251-252 are technology neutral and that the scope of state commissions' arbitration and approval encompasses more than § 251(c).

This Matter is Well-Suited for a Declaratory Ruling.

19. None of the Respondents want the PSC to issue an order with the requested declaratory ruling about technology neutrality; however, most of their objections are procedural rather than substantive. They question whether the Application meets the requirements of the PSC's regulation about declaratory proceedings (807 KAR 5:001, Section 19) or whether the issue presented is too general or unripe, and they argue that the PSC should not exercise its discretion to issue a binding declaration. These objections are ill-founded. The nature and scope of the issues presented in the Application are perfectly suited to a declaratory ruling.

20. In its 8/26/15 Order (p.1) establishing a procedural schedule for this proceeding, the PSC notes 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. These potentially impacted entities include competitive local exchange providers ("CLEC") and commercial mobile radio service providers ("CMRS").

The direct and material interest of all ILECs, CLECs, cellular providers, and other existing or potential interconnectors with ILECs is evident from the requested declaratory ruling. Each Respondent summarily relies on that evident interest for its motion to intervene. *See* AT&T Mtn. p.1; CBTC Mtn. p.1; Verizon Mtn. p.2 ¶¶4-5. However, they protest that nothing establishes that the CompSouth participants who filed the Application have "standing" to request declaratory relief. AT&T Rsp. pp. 13-15; CBTC Rsp. pp. 9-10.[21] This is absurd. The CompSouth

[21] AT&T (Rsp. p.3 fn.2, p.15 n.31) and CBTC (Rsp. p.4 fn.8) criticize the Application because it does not contain verified facts about standing. A declaratory relief application needs only to "fully disclose the applicant's interest," 807 KAR 5:001, Section 19(2)(c) — which was done in ¶¶ 1 & 3 of the Application.

participants' status as Kentucky CLECs is a matter of public record maintained by the PSC, and that is sufficient to give them a direct and material interest. 8/26/15 Order p.1. Furthermore, far from disputing that the CompSouth participants are Kentucky CLECs that interconnect with Kentucky ILECs, the AT&T response (p.3)[22] actually establishes that status and interest.

21. The Respondents also attempt to set up a "the Chicken or the Egg" dilemma. Both CBTC (p. 6) and AT&T (p. 8) argue that the members of CompSouth should comply with the Telecommunications Act of 1996 by formally requesting negotiations for an ICA with the rates, terms and conditions for IP voice interconnection. If the negotiations fail, then the CLEC would request arbitration. The ILECs state it is only then that the PSC should rule on whether it has jurisdiction pursuant to federal and state law to adjudicate the arbitration.[23] However, once the CLEC has filed for arbitration, the ILECs will argue that the PSC does not have jurisdiction to adjudicate an ICA for the IP exchange of voice traffic. *See* AT&T Rsp. p.12. Spending the time and money to try to negotiate interconnection agreements only to go to arbitration and have the ILECs argue that the PSC does not have jurisdiction is not only a waste of resources, but causes a delay of the transition to IP technology. Furthermore, having this question answered now is more efficient than addressing multiple challenges to the PSC's jurisdiction in future arbitration requests. If the ILECs are insisting that the CLECs should request negotiations for IP voice interconnection pursuant to §§ 251-252, then they should not be arguing over whether the PSC has jurisdiction over IP voice interconnection or opposing this Application.

[footnote 21 cont'd] Verification is for factual allegations, *id*. §19(6); the Application presents a legal question and does not depend on a particular "state of facts" (*id*. §19(1)). This Reply does answer some of the Respondents' factual allegations, and so is verified.

[22] CBTC also notes an existing interconnection with at least one CompSouth participant. Rsp. p.9 fn.21.

[23] Paragraphs 4 and 11 above address Respondents' claim that the PSC cannot issue the requested declaratory ruling because it lacks the authority to do so outside the context of an arbitration.

22. The Respondents also know that the declaratory ruling sought in the Application is not the equivalent of a determination in an arbitration proceeding. "Each petition for arbitration stands on its own, and each case is 'tied to factual circumstances or otherwise circumscribed in various ways' and does not guarantee interconnection with an IP network." PSC Staff Opinion p.5. A PSC arbitration decision about whether there must be voice interconnection in IP format between two carriers thus could be a function of numerous factors in addition to PSC construction of KRS Ch. 278 statutes and 47 U.S.C. §§ 251-252; furthermore, the decision is binding only on the two participants in the proceeding. In contrast, a declaratory proceeding permits focus on the legal effect of one factor (voice interconnection in IP *versus* TDM format)[24] and — like an administrative case — throws open the opportunity to participate to every utility in affected categories so that the declaratory order's binding effect is industry-wide. There is no alternative proceeding that the CompSouth participants could initiate that would be as efficient and effective as this declaratory proceeding.

23. All of the publicly filed voice ICAs referenced by AT&T are for TDM interconnection and all are in evergreen status. AT&T Rsp. p.3. Additionally, as AT&T points out (*id*.), the agreements do not provide rates, terms, and conditions for IP voice interconnection (or for the exchange of voice traffic between managed packet networks). When AT&T gives notice to terminate existing voice ICAs that are in evergreen status, all the CLECs without an IP

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[24] The contract-approval case decision that AT&T's Response (p.6 & fn.11) cites as supporting its unripeness argument actually supports issuance of declaratory rulings on narrow legal questions. In its 1/30/14 Order in Case No. 2013-00413, *Joint Application of Kenergy Corp. and Big Rivers Electric Corporation for Approval of Contracts and for a Declaratory Order*, at 19, the PSC denied the request for a broad declaration whether any (unspecified) dispute that might arise under the contracts was within its KRS Ch. 278 jurisdiction or "rightly belongs before the FERC or any other appropriate forum." It then declared more narrowly that "any dispute relating to rates or service that may arise under the agreements approved in this Order should be filed here for our review and resolution" and that if the new contracts did not become effective the next day, "Kenergy will have no choice but to terminate service" (*id*. at 20, 21 (ordering ¶¶ 3-4)).

voice ICA in place will be unable to deliver the traffic of their customers to the customers on AT&T's networks – virtually shutting down the CLECs' business. CompSouth's members need to have a definitive path of resolution for any and all of these voice interconnection issues — and the need for clarity is now.

24. In 2013, AT&T urged the PSC Staff not to "jump out in front" of the FCC on the which had "an open proceeding to address these issues" of technology neutrality[25]; the Staff disagreed that they should decline to issue an opinion.[26] Two years later, all three of the Respondents still want the PSC to wait for a possible FCC ruling. They support delay because it harms their competition. CLECs need to interconnect their IP networks for the exchange of voice traffic and to exchange that traffic in the most cost effective and efficient manner, and they need to make decisions now about network investments.

The Staff Opinion about Statutes being Technology Neutral should be Embraced in a Binding Commission Ruling.

25. Every state commission has the authority to act in the way that it believes is in the public's best interest for that state. The time is ripe to issue a binding declaratory ruling so all carriers will know that the Kentucky Public Service Commission is open for business on all matters of interconnection for the exchange of voice traffic — regardless of the technology.

26. The Staff Opinion makes it clear that the PSC has jurisdiction over voice interconnection regardless of the underlying technology, and retains its discretion to judge each request for interconnection or arbitration on the merits of the individual case. The Staff got it exactly right in its Opinion 2013-15 (pp. 4, 5):

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[25] PSC Staff Opinion 2013-15 p.2.

[26] *Id*. at p.3.

> In fact, KRS Chapter 278 neither specifies nor exempts types of interconnection dependent upon the underlying technology used. Therefore it follows that if a petition for the connecting of lines is filed pursuant to KRS 278.530, the Commission may entertain the petition regardless of the technology involved.
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> Commission Staff concludes that the current interpretation of 47 U.S.C. § 251 allows a carrier to file a petition for arbitration under 47 U.S.C. § 252 and seek interconnection regardless of the underlying technology. Kentucky law does not prohibit this result, nor does the current state of the FCC or federal law. However, each petition for arbitration stands on its own, and each case is "tied to factual circumstances or otherwise circumscribed in various ways" and does not guarantee interconnection with an IP network.

We respectfully request a Commission Order that adopts the Staff Opinion that the interconnection regimes in KRS Ch. 278 and 47 U.S.C. §§ 251-52 are technology neutral.

WHEREFORE, CompSouth respectfully requests that the PSC issue a declaratory order affirming that, regardless of the underlying technology, transmission media, or protocol used for the exchange of voice traffic between two carriers' networks (a) the interconnection regimes under 47 U.S.C. §§ 251-252 and KRS Ch. 278 apply and (b) these statutes *inter alia* permit a requesting carrier to file a petition with the PSC requesting an order prescribing the rates, terms, and conditions of interconnection with an ILEC.

Respectfully submitted,

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COMPETITIVE CARRIERS OF THE SOUTH, INC.

VERIFICATION

I, Carolyn Ridley, Senior Director of State Public Policy, Level 3 Communications, after being duly sworn, state that based on my personal knowledge, my review of the records of Level 3 Communications, and my communications with the other CompSouth participants, the facts contained in the foregoing Reply are true and accurate to the best of my knowledge.

/s/ Caroly Ridley
Carolyn Ridley

COMMONWEALTH OF ~~VIRGINIA~~ KENTUCKY)
COUNTY OF WARREN)

Subscribed and sworn to before me by Carolyn Ridley on 11/2, 2015.

/s/ Frances Ashley Roper
Notary Public

My commission expires: August 25, 2018

CERTIFICATE OF ELECTRONIC SERVICE AND FILING

I certify that the foregoing is a true and accurate conformed copy of the same document being sent for filing in paper medium with the Commission, that the electronic filing was transmitted to the Commission on November 2, 2015, and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

/s/ Katherine K. Yunker
Attorney for Applicant