

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

Inter Mountain Cable, Inc.,

Complainant,

Case No. 2020-00353

v.

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

Defendant.

VERIFIED MOTION FOR EMERGENCY RELIEF

Complainant Inter Mountain Cable, Inc. (“Inter Mountain Cable”), by counsel, moves the Public Service Commission of the Commonwealth of the Kentucky (the “Commission”) to immediately order BellSouth Telecommunications, LLC d/b/a AT&T Kentucky (“AT&T”) to honor Inter Mountain Cable’s request to open NXX 606-430 pursuant to the parties’ Interconnection Agreement, and consistent with the parties’ practices for over 12 years. In support of its motion, Inter Mount Cable states as follows.

STATEMENT OF THE FACTS¹

Put simply, AT&T has unilaterally decided without warning or advance notice that the interconnection that AT&T helped Inter Mountain Cable establish in 2007 now violates the parties’ Interconnection Agreement, and refused to open NXX 606-430 on behalf of Inter Mountain Cable so that Inter Mountain Cable may provide voice service to the Pikeville Medical Center. Inter Mountain Cable has been repeatedly advised that AT&T’s refusal to open the NXX is directly and unlawfully interfering with Inter Mountain Cable’s ability to provide service to the Pikeville

¹ Inter Mountain Cable does not attempt to fully recite AT&T’s anticompetitive and tortious behavior, or its refusal to act in good faith to resolve this action without the necessity of Commission intervention. Rather, Inter Mountain Cable incorporates the full factual background from its Complaint as though set forth fully herein, and makes this Motion for the reasons set forth in its simultaneously-filed Complaint.

Medical Center, who is attempting to switch service from an AT&T entity to Inter Mountain Cable. AT&T's sole justification for this refusal is that Inter Mountain Cable allegedly does not have a proper "interconnection" with AT&T, a claim that is belied by 12 years of joint past practice.

Inter Mountain Cable has spent the better part of the past two weeks attempting to convince AT&T that the proper course of action is for it to open traffic pursuant to the parties' established, technically feasible interconnection, which AT&T could essentially do with the push of a button. The parties could then work together to resolve any alleged contractual issues. In an effort to avoid bringing this motion, and despite disagreeing with AT&T's contractual interpretation, Inter Mountain Cable has been willing to satisfy every single one of AT&T's superfluous, network-inefficient, and ever-changing demands in an effort to – first and foremost – ensure that Pikeville Medical Center's service is not interrupted and – secondary to that – sort out any contractual or network transition issues later. Yet, AT&T has continued its intentional and deliberate interference in an effort to protect an AT&T entity from losing such an important customer, while also misinforming that customer that Inter Mountain Cable is attempting to act "illegally."

Inter Mountain Cable respectfully requests that the Commission order AT&T to immediately open the NXX 606-430 to allow Inter Mountain Cable to serve the Pikeville Medical Center, after which the parties can attempt to resolve any additional disputes, whether through negotiation or further intervention of this Commission.

ARGUMENT & ANALYSIS

A. AT&T Has Breached the Interconnection Agreement & Violated Kentucky Law.

For the reasons set forth in Inter Mountain Cable's Complaint, which is incorporated herein, AT&T has breached the Interconnection Agreement and violated KRS 278.170.

In sum, AT&T has breached the Interconnection Agreement by (1) refusing to provide interconnection at a technically feasible point of its network, which openly flouts the most basic duties imposed by the Telecommunications Act of 1996, *see* 47 U.S.C. § 251(c)(2)(B) (“[E]ach incumbent local exchange carrier has the following duties: The duty to provide . . . interconnection . . . at any technically feasible point within the carrier’s network.”); (2) refusing to carry traffic consistent with the parties’ practice for the last 12 years, which AT&T knows results in a customer-affecting issue, in violation of the duty of good faith imposed by Section 5.4 of the Agreement; and (3) disparaging Inter Mountain Cable and its services directly to the Pikeville Medical Center in violation of Section 39.2.2 of the Interconnection Agreement and other applicable law.

Additionally, AT&T has also breached KRS 278.170, which prohibits any utility from subjecting any “person to any unreasonable prejudice or disadvantage.” KRS 278.170(1). By refusing to open the NXX rate center pursuant to the parties’ interconnection established over 12 years ago, AT&T has placed Inter Mountain Cable at a competitive disadvantage, which has resulted in direct profit to AT&T and/or its affiliated CLEC because it is preventing services from being transitioned from an AT&T entity to Inter Mountain Cable.

Moreover, as more information is obtained regarding the communications between AT&T and the Pikeville Medical Center, it is possible that AT&T may have also violated Kentucky’s laws related to affiliate transactions. *See* KRS 278.2213. For example, KRS 278.2213 prohibits a regulated utility from engaging in conduct such as soliciting business on behalf of an affiliate and providing undue preferential treatment to its nonregulated affiliate to the detriment of a competitor.

B. Inter Mountain Cable is Entitled to Emergency Relief.

Kentucky’s courts have determined that granting injunctive relief requires a finding “(1) that the movant’s position presents a ‘substantial question’ on the underlying merits of the case,

i.e. that there is a substantial possibility that the movant will ultimately prevail; (2) that the movant's remedy will be irreparably impaired absent the extraordinary relief; and (3) that an injunction will not be inequitable, i.e. will not unduly harm other parties or disserve the public.” *Price v. Paintsville Tourism Comm’n*, 261 S.W.3d 482, 484 (Ky. 2008) (citations omitted).

Inter Mountain Cable has presented a substantial question as to the merits because, despite having an Interconnection Agreement with Inter Mountain Cable, and despite the Telecommunications Act's requirement that AT&T interconnect with Inter Mountain Cable at any technically feasible point on AT&T's network, AT&T has refused to open the NXX 606-430 rate center consistent with how Inter Mountain Cable's traffic has been carried pursuant to the parties' known and voluntary arrangements for over 10 years, and still to this day. Moreover, even if AT&T were to successfully demonstrate non-compliance, its behavior is unlawfully anticompetitive insofar as it leverages an alleged breach of the Interconnection Agreement that (1) requires AT&T assistance and permission to “correct”; (2) is consistent with the past more-than-12-years of interconnection with and invoicing by AT&T; and (3) allows AT&T to unilaterally prevent Inter Mountain Cable from directly competing with AT&T and an AT&T-affiliated CLEC. The very purpose of Congress requiring an ILEC to enter into an Interconnection Agreement was to promote competition (with AT&T specifically). Consequently, AT&T should not be allowed to use the Interconnection Agreement as a “sword” to eliminate competition.

Second, Inter Mountain Cable will be irreparably injured if AT&T is not required to open the NXX rate center as requested, consistent with the parties' past and current practice. Indeed, the Pikeville Medical Center has already indicated to Inter Mountain Cable that if Inter Mountain Cable cannot successfully carry all traffic, Pikeville Medical Center will be forced to award the contract to another carrier. Thus, Inter Mountain Cable will be irreparably injured if the rate center

is not opened because it will lose a customer. Moreover, the likely result is that not only will Inter Mountain Cable lose a customer, but that customer will ultimately choose to receive services from AT&T and/or AT&T's affiliated-CLEC, who submitted a competing bid against Inter Mountain Cable to serve this customer.

Finally, granting the requested emergency relief will not harm AT&T, and it will serve the public. AT&T will not be harmed because the granting of the emergency relief will only serve to preserve the status quo and simply require AT&T to carry traffic pursuant to the parties' Interconnection Agreement consistent with how AT&T is currently carrying traffic and has been for over 12 years. Moreover, Inter Mountain Cable has already committed to continuing discussions to remedy any contractual issues (if any), after the traffic for this rate center is opened and traffic carried like all of Inter Mountain Cable's other 24 NXXs, further ensuring that AT&T will suffer no harm.

Furthermore, the public would be served by granting emergency relief because it will ensure that the purpose of the Telecommunications Act – promoting competition in the telecommunications industry – is achieved. This competition will benefit the public by forcing competitors to provide the best services possible at competitive prices.

Accordingly, this motion satisfies the judicial criteria for an award of injunctive relief.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should grant Inter Mountain Cable's motion for emergency relief and order that AT&T immediately open the 606-430 NXX as requested by Inter Mountain Cable to allow Inter Mountain Cable to serve the Pikeville Medical Center.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of this Motion for Emergency Relief was served via United States Mail, postage prepaid, return receipt requested, upon the following this 23rd day of October, 2020.

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*Registered Agent for BellSouth
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It is hereby certified that a courtesy copy of this Motion for Emergency Relief was served via electronic mail upon the following this 23rd day of October, 2020.

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