



Holly C. Wallace  
502-540-2309  
holly.wallace@dinslaw.com

April 24, 2009

RECEIVED

APR 24 2009

PUBLIC SERVICE  
COMMISSION

Via Hand Delivery

Hon. Jeff Derouen  
Executive Director  
Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40601

**Re: In the Matter of: South Central Telcom LLC v. BellSouth  
Telecommunications, Inc., Case No. 2006-00448**

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case, please find one original and eleven (11) copies of South Central Telcom's Post-Hearing Brief. Please file-stamp one copy, and return it to our courier.

Thank you, and if you have any questions, please call me.

Very truly yours,

DINSMORE & SHOHL LLP

Holly C. Wallace

HCW/rk  
Enclosures  
cc: All Parties of Record  
118189v1

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

APR 24 2009

PUBLIC SERVICE  
COMMISSION

SOUTH CENTRAL TELCOM LLC )  
Complainant )  
v. )  
BELLSOUTH TELECOMMUNICATIONS, )  
INC. D/B/A AT&T KENTUCKY )  
Defendant )

Case No. 2006-00448

SOUTH CENTRAL TELCOM'S POST-HEARING BRIEF

South Central Telcom LLC ("SCT"), by counsel, hereby files its post-hearing brief in the above-referenced matter.

INTRODUCTION

This matter concerns the refusal of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T") to pay SCT's access charges for terminating AT&T's interexchange traffic. The material facts are undisputed. AT&T does not dispute that it delivers interexchange traffic to SCT. AT&T does not dispute the amount of traffic it delivers to SCT. AT&T does not dispute that it delivers the traffic over AT&T's access trunks. AT&T does not dispute that SCT has a Commission-approved intrastate access tariff. AT&T does not dispute that it has failed to compensate SCT for terminating its traffic.

Rather, AT&T argues that: (1) it is not subject to SCT's access tariff because it is a local exchange carrier, and that (2) the Telecommunications Act of 1996 (the "Act") requires SCT to execute an interconnection agreement to receive compensation for terminating access traffic. There is no such "get out of jail free card" for AT&T in the Act.

The Federal Communications Commission ("FCC") expressly stated that the Act did not replace the historical access charge regime applicable to interexchange traffic. Moreover, the FCC recognized the state commissions' authority to determine whether access charges apply to interexchange traffic exchanged between local exchange carriers ("LECs") that compete. This Commission has not exempted LECs from the historical access charge regime, and for the reasons summarized below, AT&T has not provided the Commission with any basis for doing so now.

First, AT&T and SCT are not competitors. None of their respective local service areas overlap; therefore the Act's interconnection provisions governing the exchange of local traffic are inapplicable. Second, AT&T delivers solely interexchange access traffic to SCT over AT&T's access trunks. Third, SCT does not deliver any traffic to AT&T. Fourth, AT&T's proposed resolution, that SCT use AT&T's EMI records to identify and bill every carrier with which AT&T has an agreement to deliver traffic, is wholly unworkable. It is unreasonable to require SCT to rely on AT&T's EMI records to bill for traffic terminated on SCT's network. Additionally, even if SCT could identify these third-party carriers for the purpose of billing, it is unreasonable to believe that they would pay SCT's terminating access charges because: (1) they have no business relationship with SCT; (2) they have no incentive to pay SCT's charges given AT&T is already delivering the traffic; and (3) the billing records upon which SCT would be forced to rely, AT&T's EMI records, are by AT&T's own admission insufficient to bill third-party carriers. Therefore, there is no reason for the Commission to disturb the historical access regime in this case.

Simply put, AT&T has not sustained its burden of proposing an alternative interexchange traffic regime which is both as fair and as workable as the existing access charge regime. Accordingly, the Commission should order AT&T to immediately pay all outstanding access charges to SCT.

### **STATEMENT OF FACTS**

SCT is a competitive local exchange carrier ("CLEC") operating exclusively in the Glasgow, Kentucky area served by Windstream Kentucky East, Inc. ("Windstream"). (Prefiled Direct Testimony of Max Phipps ("Phipps Direct"), 3:10-12.) AT&T is not the incumbent local exchange carrier ("ILEC") in any of SCT's exchanges. (*Id.* at 3:15-16.) SCT and AT&T exchange no local or extended area service traffic. (*Id.* at 3:16-17.) Instead, AT&T uses switched access facilities to deliver switched access traffic to SCT. (*Id.* at 3:19-20.) Switched access traffic is the only type of traffic that AT&T delivers to SCT. (*Id.* at 3:20-21.)

SCT provides switched access services to carriers pursuant to its filed and approved switched access tariff. (*Id.* at 3:22-23.) Its intrastate access tariff was deemed effective by the Commission on or about July 12, 2002. (*Id.* at 3:23-4:1.) SCT bills AT&T and all other carriers delivering intrastate switched access traffic pursuant to the terms of its filed and approved intrastate switched access tariff. (*Id.* at 4:1-2.)

Notwithstanding this filed and approved tariff, AT&T refuses to pay SCT's access bills. (*Id.* at 4:3-4.) It does not dispute the accuracy of SCT's access bills. (*Id.* at 4:4.) Nor does AT&T dispute that it owes SCT compensation for much of the traffic it delivers to SCT. (Testimony of Patricia Pellerin, Transcript of Evidence ("TR"), 57:8-59:7.) Rather, with little explanation other than its oft-recited mantra that it is not an interexchange carrier, AT&T refuses to pay SCT until it executes a contract with AT&T. (*See e.g.*, Pellerin, TR, 58:16-20.) AT&T

does not cite any legal authority for its refusal to pay SCT's access charges. Moreover, AT&T has indicated that unless SCT executes a contract, AT&T will continue withholding payment for access charges (Phipps Direct, 4:9-11) even though AT&T admits it owes SCT compensation for terminating access traffic. (*See, generally*, Pellerin, TR, 58-59.) The Commission should not permit AT&T to hold SCT hostage to its invalid demand for a contract.

### ARGUMENT AND ANALYSIS

#### **I. THE TELECOMMUNICATIONS ACT OF 1996 DOES NOT REQUIRE SCT TO EXECUTE A CONTRACT TO RECEIVE INTEREXCHANGE TRAFFIC.**

The Telecommunications Act of 1996 does not relieve AT&T of its duty to pay tariffed access charges, nor does it require SCT to execute an interconnection agreement solely to receive AT&T's interexchange traffic.<sup>1</sup>

The purpose of the Act is to foster competition "in the market for local telephone service." *Alenco Communications, Inc. v. F.C.C.*, 201 F.3d 608, 625 (5<sup>th</sup> Cir. 2000). Local telephone service, that is local traffic or *intraexchange* traffic, is not at issue in this case. The parties do not exchange any *intraexchange* or local traffic, nor are they competitors. (Phipps Direct, 3:16-17.) "South Central Telcom is not doing business in AT&T Kentucky's service territory." (Prefiled Direct Testimony of Patricia Pellerin ("Pellerin Direct"), 6:3-4.)

The only traffic exchanged between the parties is *interexchange* traffic, also known as long-distance or toll traffic. (Phipps Direct, 3:16-17.) As explained more fully below, the Act did not disrupt the historical compensation regime applicable to interexchange traffic; therefore

---

<sup>1</sup> AT&T raised the issue of an interconnection agreement as an affirmative defense to SCT's claim for unpaid, tariffed access charges. AT&T, therefore, bears the burden of proving that SCT is required to execute an interconnection agreement to terminate AT&T's interexchange traffic. *City of Louisville, Div. of Fire v. Fire Service Managers Ass'n ex rel. Kaelin*, 212 S.W.3d 89, 94 (Ky. 2006) ("The party asserting an affirmative defense has the burden to establish that defense. The party with the burden of proof on any issue has the burden of going forward and the ultimate burden of persuasion as to that issue.") AT&T has failed to satisfy this burden.

there is no requirement under the Act that a carrier execute an interconnection agreement solely to receive interexchange traffic.<sup>2</sup>

The Act establishes a three-tiered system of interconnection obligations, none of which, as the FCC has held, disrupt the access charge regime applicable to interexchange traffic. *See* 47 U.S.C. §251. Under the first tier, all telecommunications carriers are required to interconnect their facilities directly or indirectly. "Each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers . . . ." 47 U.S.C. §251(a)(1); 47 C.F.R. §51.100(a)(1). Both SCT and AT&T have satisfied this obligation in relation to each other. "AT&T Kentucky connects to South Central Telcom indirectly via South Central Rural." (Pellerin Direct, 7:7-8.) Thus, the first tier of interconnection-related obligations under the Act is not at issue in this case.

Under the second tier of interconnection-related obligations, LECs have additional duties, none of which are at issue in this matter.<sup>3</sup> The third and final tier of interconnection obligations applies solely to ILECs like AT&T (not CLECs like SCT) and is triggered upon a bona fide request for interconnection by another telecommunications carrier.

**(c) Additional obligations of incumbent local exchange carriers**

In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:

**(2) Interconnection**

The duty to provide for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

- (A) for the transmission and routing of telephone exchange service and exchange access;

---

<sup>2</sup> *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, FCC 96-325, 11 F.C.C.R. 15499 (August 8, 1996) ("*First Report and Order*").

<sup>3</sup> The additional duties include: (1) making their telecommunications services available for resale; (2) providing number portability; (3) providing dialing parity; (4) affording access to rights-of-way; and (5) establishing reciprocal compensation arrangements. 47 U.S.C. §251(b).

- (B) at any technically feasible point within the carrier's network;
- (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
- (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

47 U.S.C. §251(c)(2). Nothing, therefore, within the provisions of the Act quoted above requires SCT to execute an interconnection agreement solely to terminate interexchange traffic.

Moreover, the FCC held in the *First Report and Order* that the Act did not replace the access charge regime that historically governed interexchange traffic. *First Report and Order*, ¶ 1033.

We conclude, however, as a legal matter, that transport and termination of local traffic are different services than access service for long-distance telecommunications. Transport and termination of local traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 252(d)(2), while access charges for interstate long-distance traffic are governed by sections 201 and 202 of the Act. The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic.

*Id.* at ¶1033 (emphasis added).

Nor did the FCC limit the application of the access charge regime to traffic delivered by interexchange carriers. The FCC expressly stated with regard to traffic exchanged between LECs,

[S]tate commissions have the authority to determine what geographic areas should be considered “local areas” for the purpose of applying reciprocal compensation obligations under

section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs.

*Id.* at ¶1035. "Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges." *Id.* (emphasis added).

All of the traffic delivered by AT&T to SCT originates in an area outside of SCT's local service territory. (Prefiled Rebuttal Testimony of Max Phipps ("Phipps Rebuttal"), 5:18-19.) By definition, therefore, all of the traffic delivered by AT&T to SCT is interexchange traffic subject to the access charge regime, not the requirements of Sections 251 and 252 of the Act. *First Report and Order*, ¶1035.

AT&T's own actions appear to reflect its realization that an interconnection agreement is not required under the Act. While AT&T's witness, Patricia Pellerin, testified that SCT should negotiate an interconnection agreement with AT&T, (Pellerin Direct, 5:24-6:2; *see also* Pellerin, TR, 56:2-4) she also testified that AT&T is willing to negotiate an agreement "apart from the requirements of Section 251." (Pellerin Direct, 6:16; *see also* Pellerin, TR, 56:4-7.) Surely AT&T would not offer to execute an agreement *outside* the strictures of the Act if the law required the parties to execute an agreement *within* the strictures of the Act. Either the law requires the parties to execute an interconnection agreement or it does not. AT&T's own actions reflect that the Act does not require the parties to execute an interconnection agreement for SCT simply to receive AT&T's interexchange traffic.

## **II. THE COMMISSION SHOULD ORDER AT&T TO PAY SCT'S ACCESS CHARGES FOR ALL OF THE INTEREXCHANGE TRAFFIC IT DELIVERS TO SCT.**

All of the traffic delivered by AT&T to SCT is interexchange traffic delivered over AT&T's access trunks. (Phipps Rebuttal, 5:18-19.) AT&T, however, parses the interexchange traffic into five subsets. Pellerin testified that AT&T delivers five subsets of traffic to SCT, only



four of which are at issue in this dispute: (1) AT&T-originated toll traffic; (2) non-facilities-based CLEC traffic; (3) independent telephone company ("ICO") traffic; (4) facilities-based CLEC traffic; and (5) commercial mobile radio service ("CMRS") traffic, also known as wireless traffic. (Pellerin, TR, 57:8 - 59:7.) The parties agree that SCT does not bill AT&T for CMRS traffic; therefore CMRS traffic is not part of this dispute. "It is my understanding that South Central subtracts CMRS traffic before billing AT&T Kentucky . . . [s]o this traffic is not reflected in the parties' billing dispute." (Pellerin, TR, 57:15 - 19.) Of the four remaining types of traffic before this Commission, AT&T concedes a willingness to compensate SCT for three of them: (1) AT&T-originated traffic; (2) non-facilities-based-originated CLEC traffic; and (3) ICO-originated traffic. The fourth type of traffic, originated by facilities-based CLECs, is virtually identical to the other three. It, too, is interexchange traffic delivered over access trunks and therefore, pursuant to KRS 278.170, must receive like treatment. Accordingly, the Commission should order AT&T to immediately pay SCT for all of the traffic it delivers to SCT over its access trunks.

**A. AT&T Admits it Owes SCT Compensation for AT&T-Originated Traffic.**

During the public hearing on February 25, 2009, Pellerin testified that AT&T delivers AT&T-originated toll traffic to SCT over the access facilities indirectly connecting the companies.

Q. How should the traffic originated on AT&T's network by AT&T customers be classified if it's not toll traffic?

A. It is toll traffic. It is toll traffic, and it's routed over the facilities that we jointly established with South Central Rural . . . .

(Pellerin, TR, 87:17-21.) Pellerin testified further that AT&T owes compensation to SCT for that traffic at SCT's access rates.

[Regarding] AT&T Kentucky originated toll traffic, AT&T Kentucky has agreed to pay South Central at rates commensurate with South Central's terminating access rates. AT&T Kentucky is not seeking to avoid its obligations with respect to this traffic, nor is it seeking to undercut South Central's access tariff rates.

(Pellerin, TR, 58:10-16.)

Incredibly, however, Pellerin testified that even though AT&T recognizes it delivers toll traffic to SCT, and that it owes SCT compensation at SCT's access rates for terminating that traffic, AT&T will not pay SCT until it executes an agreement with AT&T. (*Id.* at 58:16-20.) There is no basis in law for AT&T's refusal to pay SCT's tariffed access charges. The FCC expressly recognized in the *First Report and Order* that LECs remain subject to access charges absent a determination by the state commission to the contrary.

We expect the states to determine whether intrastate transport and termination of traffic between competing LECs, where a portion of their local service areas are not the same, should be governed by section 251(b)(5)'s reciprocal compensation obligations or whether intrastate access charges should apply to the portions of their local service areas that are different.

*First Report and Order*, ¶1035 (emphasis added).

AT&T and SCT do not provide local service in any of the same exchanges; all of their local service areas are different. (Phipps Direct, 3:16-17; Pellerin Direct, 6:3-4.) Moreover, AT&T has failed to cite any Commission precedent holding that LECs are immune from paying tariffed access rates. Therefore, there is no legal basis for AT&T to refuse to pay SCT's access charges. AT&T's flagrant refusal to pay SCT's properly-billed access charges is nothing more than an attempt to leverage its monopoly power to force SCT to submit to a contract that would burden SCT with unnecessary terms and conditions. The Commission should order AT&T to

immediately pay SCT for all outstanding charges, plus interest and penalties, for all AT&T-originated toll traffic.

**B. AT&T Agreed to Compensate SCT for Non-facilities Based CLEC Traffic.**

In addition to testifying that AT&T owes SCT its access rates for AT&T-originated traffic, AT&T also agreed to compensate SCT for terminating non-facilities based CLEC traffic.

[Regarding] non-facilities-based CLEC traffic that utilizes AT&T Kentucky's local switching, this includes AT&T Kentucky's resale and wholesale local switching platform services, and you'll see those in the diagram behind the yellow circle representing the AT&T Kentucky switch. Although AT&T Kentucky's end users do not originate this traffic, it does originate on AT&T Kentucky's switch. Therefore, AT&T Kentucky is willing to negotiate terms and conditions with South Central regarding compensation for termination of traffic.

(Pellerin, TR, 58:21-59:7.)

As Pellerin testified above, AT&T admits that the non-facilities-based CLEC traffic originates on its network. In addition, AT&T acknowledges that it should compensate SCT for terminating the traffic. Nonetheless, AT&T refuses to pay SCT unless it negotiates a contract with AT&T. (*Id.*) As stated above, there is no basis in law for AT&T to refuse to pay for the terminating access services it has enjoyed. *See First Report and Order*, ¶1035. This Commission has not immunized LECs from paying tariffed access rates, nor should it. AT&T is simply attempting to leverage its power to force SCT to provide it with discriminatorily favorable terms and conditions in violation of KRS 278.170.

No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

KRS 278.170(1). The Commission should order AT&T to immediately pay SCT for all outstanding charges, plus interest and penalties, for all non-facilities-based CLEC traffic.

**C. AT&T Agreed to Compensate SCT for ICO Traffic.**

AT&T admits that it is the default toll provider for ICO-originated traffic within the Louisville LATA. As such, AT&T functions as an interexchange carrier.

When an end user served by an ICO does not select an interexchange carrier or access an interexchange carrier through a 10xxx dial around mechanism, through the KRSP, AT&T is the default intraLATA toll provider, as we are for a number of our own end users, and, in that situation, AT&T has to carry the call.

(Pellerin, TR, 100:11-17 (emphasis added).) Recognizing that it is the toll provider for ICO traffic, just as it is “for a number of [its] own end users,” AT&T admits it owes SCT compensation for terminating ICO-originated traffic. (*Id.*)

[Regarding] independent telephone company or ICO-originated traffic, although AT&T Kentucky does not originate this traffic, AT&T Kentucky is willing to negotiate terms and conditions with South Central regarding compensation for exchange of this traffic based on the originating ICO's reported toll traffic.

(Pellerin, TR, 58:4-9.) Once again, however, AT&T refuses to compensate SCT for terminating the traffic unless and until it executes an unnecessary and burdensome contract with AT&T. There is no state or federal authority for AT&T's refusal to compensate SCT at SCT's tariffed access rates. The Commission should order AT&T to immediately pay SCT for all outstanding charges, plus interest and penalties, for all ICO traffic.

**D. Facilities-Based CLEC Traffic is Substantially Similar to the Traffic for Which AT&T Has Agreed to Pay.**

Of the four subsets of interexchange traffic delivered by AT&T to SCT at issue in this dispute, the only type of traffic for which AT&T disclaims any obligation to compensate SCT is facilities-based CLEC traffic. There is no reasonable basis, however, for AT&T to single out

this type of traffic for distinct treatment as it, like the other three types of traffic discussed above, is nothing other than interexchange traffic delivered over access trunks. As with both the non-facilities-based CLEC traffic, and the ICO traffic, AT&T provides a service to the originating carrier for which AT&T receives compensation and for which it should in turn compensate SCT. In the case of non-facilities-based CLEC traffic, AT&T provides retail and wholesale services. (Pellerin, TR, 58:21-59:7.) In the case of the ICO traffic, AT&T provides toll service. (Pellerin, TR, 100:11-17.) In the case of facilities-based CLEC traffic, AT&T provides what it labels as transit service.

The Commission should not be fooled by AT&T's use of the term "transit." AT&T's use of that term does not transform the traffic from anything other than what it is – interexchange traffic. AT&T labels any traffic that originates with one carrier, crosses AT&T's network, and terminates with SCT as "transit traffic." "Transit traffic originates on one carrier's network, passes through AT&T Kentucky's network, and terminates with a South Central end user." (Pellerin, TR, 56:19-21.) The Commission should note, however, that AT&T never claims that this traffic is *intraexchange* traffic, nor can it. The traffic remains non-local, non-EAS, interexchange traffic. (Phipps Rebuttal, 5:18-19.) As such, it is indistinguishable to SCT from all the other interexchange traffic delivered by AT&T over the access trunks (Pellerin, TR, 93:13-14) and it is equally subject to SCT's Commission-approved access tariff.

Nonetheless, AT&T claims it does not have to compensate SCT for terminating this traffic because it is originated by third-party CLECs. (*See, generally*, Pellerin Direct.) This position is inconsistent with AT&T's position regarding non-facilities-based CLEC traffic and ICO traffic. AT&T recognizes its obligation to compensate SCT for non-facilities based CLEC traffic, which is third-party traffic, and ICO traffic, which is also third-party traffic.

In addition, AT&T testified that it is compensated by the CLECs for the transit service it provides (Pellerin, TR, 93:22-23), just as it is compensated for the retail and wholesale services it provides to non-facilities-based CLECs, and the toll service it provides to ICOs. Therefore, there is no rational basis for AT&T to disavow any obligation to compensate SCT for terminating interexchange traffic delivered by AT&T and originated by facilities-based CLECs.

No utility shall . . . establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

KRS 278.170(1). The terminating access services SCT provides to AT&T for facilities-based CLEC traffic is identical to the terminating access services it provides to AT&T for AT&T-originated traffic, as well as for any other third-party-originated traffic. Accordingly, there is no rational basis for AT&T to agree to pay SCT's access rates for AT&T-originated traffic but not for facilities-based CLEC traffic. The Commission should order AT&T to immediately pay SCT's outstanding access charges for facilities-based CLEC traffic.

### **III. SCT DOES NOT HAVE THE ABILITY TO RECOVER TERMINATING ACCESS CHARGES FROM THIRD-PARTY CARRIERS; AT&T DOES.**

AT&T's proposed resolution to this dispute is for SCT to track down and bill each and every third-party carrier that has an agreement with AT&T to deliver interexchange traffic.

Q. Would South Central need an agreement with every CLEC that AT&T has agreements with so that they will be able to bill the transit traffic that AT&T sends to South Central?

A. They would need some kind of an agreement with the originating carriers pursuant to which they could bill them; yes.

(Pellerin, TR, 97:18-20.) Under this scenario, AT&T could market its transit services to carriers throughout the LATA, reap the monetary rewards for providing that service, dump the

interexchange traffic on SCT over the access trunks without compensating SCT, and force SCT to identify and pursue every carrier to which AT&T is providing this service in order to receive compensation for the unsolicited traffic dumped on its network. In other words, AT&T could control: (1) which carriers deliver interexchange traffic to SCT via AT&T, (2) how much traffic is delivered to SCT via AT&T, (3) how SCT is compensated for that traffic, and (4) with which carriers SCT must negotiate in an effort to receive compensation for terminating interexchange traffic. Nothing within the Act requires SCT to give AT&T such control over its network.

In addition, AT&T's proposed resolution utterly disregards the likelihood of whether SCT could actually recover any compensation from third-party carriers. AT&T originally claimed the EMI records it sends SCT are sufficient for it to bill the carriers. (Pellerin, TR, 85:18-86:1.) Upon further examination, however, AT&T's witness admitted that she did not have the expertise to testify to the sufficiency of the billing records. (Pellerin, TR, 99:4-14.) She also testified that the EMI records are insufficient for AT&T to bill the carriers in part because AT&T cannot demonstrate that it has actually paid SCT. (Pellerin, TR, 95:12-15.) It is no surprise that AT&T cannot demonstrate that it has paid SCT because it has not! This problem is easily rectified – AT&T should simply pay SCT.

Moreover, if the records are insufficient for AT&T to bill the carriers, then it strains credulity to believe that they are sufficient for SCT to bill them, particularly given SCT has no relationship with those carriers. One can only conclude that AT&T is indifferent as to whether SCT is able to recover the compensation it is due for terminating AT&T-delivered interexchange traffic. In fact, AT&T admitted as much when it refused to acknowledge that the sufficiency of the billing records is an issue in this dispute.

Q. Ms. Pellerin, Mr. Selent was asking you some questions about the sufficiency of the EMI records that AT&T sends

to South Central Telcom. Do you recall that line of questioning?

A. Yes.

Q. Is the sufficiency of the records AT&T provides to South Central Telcom – has that been an issue in this case?

A. No it has not.

(Pellerin, TR, 102:7-15.)

AT&T's resolution is all the more preposterous given AT&T has the ability to recover any charges it may incur for delivering third-party-originated interexchange traffic.<sup>4</sup>

Q. [W]hat I am asking you is, if this agreement that's Exhibit 1 to your testimony were executed by a CLEC - not South Central Telcom; were executed by a CLEC - and, as a consequence, AT&T Kentucky switched or transported that CLEC's traffic and incurred charges, would the provisions I just read to you or would this agreement otherwise require the CLEC to reimburse you for the charges thereby resulting?

A. Yes[.]

(Pellerin, TR, 76:10-19.) AT&T has in place the contractual provisions to recover the termination charges it incurs for delivering interexchange traffic to SCT. Nonetheless, AT&T refuses to make use of AT&T's own contractual provisions, preferring instead to shift the burden to SCT to track down each carrier that sends interexchange traffic to AT&T. The Commission should not permit AT&T to reap the benefits of inserting itself in the flow of traffic by collecting fees for this traffic aggregation function without paying any of the terminating costs associated with doing so. AT&T's blatant attempt to foist the costs associated with its traffic aggregation

---

<sup>4</sup> In fact, it has long been AT&T's position that this Commission should authorize it to recover from third-party-originating carriers any terminating access charges it incurs for delivering the carriers' traffic. (SCT Avowal Exhibit 1, Excerpt from the Issue Matrix utilized in *In the Matter of: Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC of an Interconnection Agreement with BellSouth Telecommunications, Inc. pursuant to Section 252(B) of the Communications Act of 1934, as amended*, before the Kentucky Public Service Commission, Case No. 2004-00044, attached hereto as Exhibit 1.)



business onto SCT constitutes a barrier to entry that may “have the effect of prohibiting the ability of [SCT] to provide . . . intrastate [terminating access] service” in violation of the Act. 47 U.S.C. §253(a).

**IV. AT&T OWES SCT IN EXCESS OF \$88,763.67 FOR TERMINATING ACCESS SERVICES.**

As stated in the Introduction of this brief, AT&T does not deny that it has been sending (and continues to send) interexchange traffic over its access trunks to SCT, (*see, e.g.*, Pellerin, TR, 54:12-16) and that SCT has a Commission-approved intrastate access tariff on file with the Commission. (Pellerin, TR, 54:22.) It is also undisputed that there is no agreement between the parties that supersedes SCT’s access tariff. (Pellerin, TR, 55:15-23.)

Accordingly, pursuant to the filed-rate doctrine, SCT’s access tariff governs the terminating access services provided by SCT to AT&T.

[N]o utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules.

KRS 278.160(2). Moreover, given that other carriers that deliver interexchange traffic to SCT pursuant to SCT’s access tariff pay SCT’s tariffed access rates, AT&T must do the same. SCT is prohibited by law from providing AT&T with preferential treatment.

[N]o utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

KRS 278.170(1).

As of the April 5, 2009 billing, AT&T owes SCT \$88,763.67 in unpaid, tariffed, terminating access charges. This figure is growing on a monthly basis. AT&T has never

contended that it has made *any* payment to SCT for terminating interexchange traffic, nor has it disputed the volume of traffic SCT reports to have terminated. Thus, it is an uncontroverted fact that AT&T has not paid SCT for terminating interexchange traffic, and as a consequence owes SCT in excess of \$88,763.67 as of the time of the filing of this post-hearing brief.

### **CONCLUSION**

Pursuant to the Telecommunications Act of 1996, the *First Report and Order*, and KRS 278.160 and 278.170, AT&T is required to pay SCT's access charges billed pursuant to its Commission-approved PSC KY Tariff No. 2. AT&T admits that it has delivered (and continues to deliver) interexchange traffic to SCT over AT&T's access trunks. AT&T does not dispute the volume of traffic billed by SCT, nor does it claim that it has made any payments to SCT for terminating its interexchange traffic. Additionally, this Commission has not exempted local exchange carriers from paying access charges.

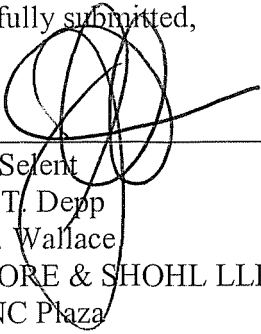
Moreover, AT&T's proposed resolution, that SCT use AT&T's EMI records to identify and bill every carrier with which AT&T has an agreement to deliver traffic, is wholly unworkable. Even if SCT were able to identify the third-party carriers, it is unreasonable to believe that those carriers would pay SCT's terminating access charges because: (1) they have no business relationship with SCT; (2) they have no incentive to pay SCT's charges given AT&T is already delivering the traffic; and (3) AT&T's EMI records are by AT&T's own admission insufficient to bill third-party carriers.

Simply put, AT&T has not sustained its burden of proposing an alternative interexchange traffic regime which is both as fair and as workable as the existing access charge regime.

Therefore, for the reasons stated above, this Commission should order AT&T to immediately pay \$88,763.67 in outstanding access charges, plus interest and penalties, to SCT.

In addition, the Commission should order AT&T to timely pay SCT's access charges on a going-forward basis.

Respectfully submitted,



---

John E. Selent  
Edward T. Depp  
Holly C. Wallace  
DINSMORE & SHOHL LLP  
1400 PNC Plaza  
500 W. Jefferson Street  
Louisville, Kentucky 40202  
(502) 540-2300  
(502) 585-2207 (fax)

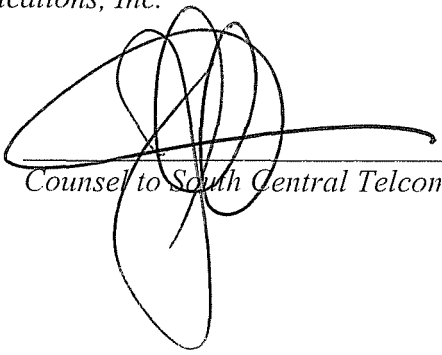
*Counsel to South Central Telecom LLC*

**CERTIFICATE OF SERVICE**

I hereby certify a true and accurate copy of the foregoing was served on the following  
this 24th day of April, 2009:

Mary K. Keyer  
General Counsel/Kentucky  
601 W. Chestnut Street  
P.O. Box 32410  
Louisville, KY 40232  
*Counsel for BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky*

Robert A. Culpepper  
AT&T  
675 West Peach Tree Street, NW  
Room 4325  
Atlanta, GA 30375  
*Counsel for BellSouth Telecommunications, Inc.*



---

*Counsel to South Central Telecom LLC*



# Reimbursement for Third Party Traffic

Item No.	Issue #	§	Unresolved Issue	BellSouth Position
63	3-4	10.10.6 (KMC), 10.8.6 (NSC), 10.8.6 (NVX), 10.13.5 (XSP)	<p><b>BellSouth Issue Statement:</b> Under what terms should CLEC be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers to terminate CLEC originated traffic?</p>	<p>In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by CLEC, CLEC should reimburse BellSouth for all charges paid by BellSouth.</p>

-Excerpt from the Issue Matrix utilized *In the Matter of: Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xpedius Communications, LLC of an Interconnection Agreement with BellSouth Telecommunications, Inc. pursuant to Section 252(B) of the Communications Act of 1934, as amended*, before the Public Service Commission, Case No. 2004-00044.