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July 12, 2010

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**PUBLIC SERVICE
COMMISSION**

VIA COURIER

Mr. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: South Central Telcom LLC, Complainant, v. BellSouth
Telecommunications, Inc., Defendant
KPSC 2006-00448

Dear Mr. Derouen:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of AT&T Kentucky's Motion for Clarification/Modification and for Extension of Time.

Sincerely,


Mary K. Keyer

Enclosures

cc: Party of Record

828775

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SOUTH CENTRAL TELCOM, LLC)	
)	
COMPLAINANT)	
)	
)	CASE NO.
)	2006-00448
BELLSOUTH TELECOMMUNICATIONS, INC.)	
D/B/A AT&T KENTUCKY)	
)	
)	
DEFENDANT)	

**AT&T KENTUCKY'S MOTION FOR CLARIFICATION/MODIFICATION AND FOR
EXTENSION OF TIME**

Pursuant to KRS § 278.400, BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky ("AT&T Kentucky"), respectfully requests that the Kentucky Public Service Commission ("Commission") clarify and modify one aspect of its order dated June 22, 2010 ("*Order*"). AT&T Kentucky requests that the first full paragraph on page 13 of the *Order* be stricken as it is unclear and confusing, has no legal basis, is inconsistent with other findings and conclusions set forth in the *Order*, and describes a scenario in one instance that cannot happen. AT&T Kentucky further requests that the Commission modify and clarify its *Order* to make it clear that AT&T Kentucky is not responsible for paying access charges to South Central Telcom LLC ("South Central Telcom") for the toll traffic referenced in the first full paragraph on page 13 of the *Order*. Finally, AT&T Kentucky requests the Commission to extend the time within which the Parties have to file a traffic exchange agreement to 60 days from the date the Commission rules on this motion. In support of its motion, AT&T Kentucky states the following.

STANDARD FOR REHEARING

KRS § 278.400 allows any party to apply for rehearing with respect to “any of the matters” determined by the Commission. The Commission, in construing KRS § 278.400, has determined that “the administrative agency retains full authority to reconsider or modify its order during the time it retains control over any question under submission to it.” Order on Rehearing, *General Adjustments in Electric Rates of Kentucky Power Company*, Case No. 7489, at 3 (June 27, 1980). Further, the Commission can reconsider an order based upon evidence adduced at the initial hearing or new evidence presented at rehearing. See Order, *Adjustment of the Rates of Kentucky-American Water Company*, Case No. 2000-120, at 2-3 (Feb. 26, 2001).

DISCUSSION

In the first full paragraph of its *Order* on page 13 (emphases in original), the Commission states:

If, however, the calling party is a customer of a facilities-based CLEC or other ICO within AT&T Kentucky’s service area and the customer places a non-local toll or long-distance call to South Central, the call is deemed to have originated on AT&T Kentucky’s network, if the calling party is not using another presubscribed IXC. In those instances, AT&T Kentucky is functioning as an IXC and should pay access charges to South Central for the toll traffic.

This language should be eliminated from the *Order* for three reasons: (1) there is no legal or other basis for finding and concluding that AT&T Kentucky is the default IXC, as that language implies, for facilities-based CLEC customers in the scenario described above, (2) such a finding and conclusion are inconsistent with the Commission’s well-established principle that the “calling party’s network pays” and with other findings and conclusions in the *Order*, and (3) a customer of an ICO cannot be located “within AT&T Kentucky’s service area” as indicated, therefore, the ICO scenario described in the

language above could not occur. The Commission should modify and clarify its *Order* to indicate that in the scenarios described above, AT&T Kentucky is not the originating carrier but is a third party transit carrier and is not responsible for paying access charges to South Central Telcom for the subject toll traffic.¹

I. There Is No Legal or Other Basis to Find and Conclude that AT&T Kentucky Is the Default IXC for a Facilities-Based CLEC Customer Who Is Not Using Another Presubscribed IXC.

The Commission on page 12 of its *Order* (emphasis in original)² correctly held:

If, however, the calling party is a customer of a facilities-based CLEC or other ICO within AT&T Kentucky's service area and the customer places a local call to South Central, the call originates on the facilities-based CLEC's or ICO's network. The call is then transferred from the facilities-based CLEC's or ICO's network to AT&T Kentucky's network so the call can be transited to South Central via AT&T Kentucky's interconnection with South Central Rural. In those instances, the 'calling party's network' is the facilities-based CLEC or ICO and is the party that should be responsible for compensation for local traffic.

The Commission appears, however, to have misapplied the principles agreed to in the Kentucky Restructured Settlement Plan ("KRSP") between AT&T Kentucky *and the RLECs*³ in rendering its *Order* on page 13 regarding toll and long distance traffic. As the Commission confirmed in the last sentence of the first paragraph on page 9 of its *Order*, no facilities-based CLECs are party to the terms and conditions of the KRSP, nor was the KRSP ever intended for participation by facilities-based CLECs.

¹ As Ms. Pellerin indicated in her testimony in the hearing, AT&T Kentucky is willing to negotiate with South Central Telcom for terminating toll traffic of an ICO end-user that is transited by AT&T Kentucky when AT&T Kentucky is the default intraLATA carrier for the ICO end-user pursuant to the Kentucky Restructured Settlement Plan ("KRSP"). *Hearing Transcript (Tr.)* at 58. In that scenario, such ICO-originated toll traffic would not originate in AT&T Kentucky's service area.

² For the reasons stated on pages 1, 2 and 12 of AT&T Kentucky's Response, the Commission should also eliminate the references to the ICO in this paragraph since a customer of an ICO would not and could not be located "within AT&T Kentucky's service area."

³ The KRSP is contained in Exhibit C, Basis of Compensation, IntraLATA Switched Toll Services Annex and Addendum 1, Memorandum of Understanding, to the Commission's January 23, 1992, Order ("*KRSP Order*") approving the KRSP in *In the Matter of: An Inquiry into IntraLATA Toll Competition, An Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality*, Admin. Case No. 323, Phase I.

The KRSP is between AT&T Kentucky and certain Kentucky RLECs (or ICOs).⁴ The basic premise of the KRSP is that AT&T Kentucky acts as a default intraLATA toll carrier for end users of those RLECs participating in the KRSP to the extent such end users have not presubscribed to another carrier for intraLATA toll traffic as defined in the KRSP and AT&T Kentucky's General Subscriber Service Tariff (GSST) and/or Guidebooks. Under the KRSP, where an intraLATA toll call originates from a participating RLEC's end user located in the RLEC's territory, and the originating RLEC routes such call to AT&T Kentucky for transport, the RLEC will bill and collect intraLATA toll charges from the end user at the AT&T Kentucky intraLATA toll tariff rates and report and remit that end user revenue to AT&T Kentucky (less a billing and collection charge). The originating RLEC bills to AT&T Kentucky the originating RLEC's originating access tariff rates. Under the KRSP, AT&T Kentucky has collected end user toll revenue from which to pay the originating RLEC's originating access rates and the terminating carrier's terminating access rates.⁵

AT&T Kentucky does not act as an IXC (default or otherwise) for any facilities-based CLEC's end users. Those end users are not presubscribed to AT&T Kentucky for any toll calls, and AT&T Kentucky does not collect any toll charges from any facilities-based CLEC end users.⁶ Presumably, such end users are presubscribed to the CLEC or another carrier for originating toll traffic.⁷ If the CLEC sends the call to

⁴ The terms "ICOs" and "RLECs" refer to the same incumbent rural local exchange carriers and are used interchangeably herein.

⁵ See *KRSP Order* at 22; *KRSP* at 3, 5; and *KRSP Addendum 1 Memorandum of Understanding*.

⁶ *Tr.* at 57; *Pellerin Direct* at 24-25.

⁷ In fact, some CLECs require their end users to select the CLECs as their toll and long distance providers. See, e.g., (1) Insight Communications Insight Phone 2.0 Residential Service Agreement - <http://www.myinsight.com/documents/Ph2.0ServAgrmnt.pdf> at 7, Sec. 8(b) ("By completing Insight's LOA, Customer acknowledges that it is authorizing Insight or its designated agent to change your local, toll, and long distance service provider to Insight and to access your existing account records to process

AT&T Kentucky for termination, however, AT&T Kentucky delivers the call to the extent technically possible because (1) AT&T Kentucky does not know how the originating facilities-based CLEC defines its local calling areas for its end users; and (2) AT&T Kentucky does not know what arrangement the CLEC may have with the terminating carrier with respect to jurisdiction of the call. *Pellerin Direct* at 24.

Facilities-based CLECs are free to define their end user calling areas and plans in any fashion they deem appropriate for competitive purposes. Facilities-based CLECs are not restricted to the tariff calling plans provided by AT&T Kentucky to AT&T Kentucky's end users. Therefore, what South Central Telcom may define as a terminating "intraLATA toll" call, the originating facilities-based CLEC may define as a "local" call for its end user. If the originating facilities-based CLEC defines its originating call as "local", it may route the call to AT&T Kentucky for delivery to South Central Telcom. But South Central Telcom may define the call as an intraLATA toll call and thus seek terminating access.

For example, in Section 10.1 of its Kentucky Tariff No. 4, Dialog Telecommunications defines its local calling area for each customer as "the LATA where their serving central office is located." In this case, Dialog would appear to consider all intraLATA calls as local and would therefore likely route all intraLATA traffic to AT&T Kentucky for delivery to South Central Telcom. But it is probable that South

that request. Customer acknowledges and understands that by selecting Insight and completing the LOA, Insight will be Customer's only provider for local, toll, and long distance calling."); (2) Dialog Telecommunications, Inc. Unlimited Connection Service Plan - http://psc.ky.gov/tariffs/Telecommunications/Telecommunications_D-M/Dialog%20Telecommunications,%20Inc/Tariff%20No.%204%20-%20Local%20and%20Toll%20Services.pdf at page 51, Sec. 7.2.2a ("The Unlimited Connection Service Plan combines monthly local and long distance voice service which is charged, on a bundled basis, to the customer on a flat-rated, per-line basis. The local calling area for the plan is the LATA of the serving office. ... Customers must obtain all local, local toll, and long distance service from the Company on all lines provisioned at the locations where the Company is providing service to the Customer.").

Central Telcom would not consider all calls from Dialog customers to South Central Telcom to be local, but to be intraLATA toll traffic. It is for this very reason that the originating and terminating carriers should negotiate their own direct or indirect interconnection or traffic exchange agreements regarding intercarrier compensation.

The Commission's *Order* in the first full paragraph on page 13 presumes that the facilities-based CLECs' end users are placing "1+" intraLATA toll calls that are being routed to AT&T Kentucky, but there is no evidence of such in the record of this case. To the contrary, as stated previously, AT&T Kentucky is not the presubscribed intraLATA toll carrier for any facilities-based CLEC end user and there is no legal basis upon which to consider AT&T Kentucky a "default" IXC for any CLEC end user. The Kentucky Commission has previously found that AT&T Kentucky has an obligation to provide a transit function to CLECs (though AT&T Kentucky respectfully disagrees with such a finding).⁸ The Commission has not found, however, and cannot legally find, that AT&T Kentucky is responsible to the terminating carrier for payment of terminating intercarrier compensation, whether terminating access or terminating reciprocal compensation.

AT&T Kentucky has no way of knowing whether the originating and terminating carriers consider the traffic at issue local or toll as between them, and in some cases those carriers may disagree as to the jurisdiction. There is no reasonable way, and no legal basis upon which, to differentiate the jurisdiction of traffic that AT&T Kentucky transits for facilities-based CLECs.

⁸ See Case No. 2004-00044, Order at 15 (Sept. 26, 2005) ("The Commission has previously required third party transiting by the incumbent based on efficient network use. The Commission will continue to require [AT&T Kentucky] to transit such traffic.").

As Ms. Pellerin explained in her Direct Testimony (at 24-25),

The primary and most relevant distinction [between a transit provider and IXC] is that an IXC has an end user customer that it bills for a toll call. Thus, the IXC has a revenue source from which it pays originating and terminating switched access to the interconnected local exchange carriers at both ends of the call. A transit provider (such as AT&T Kentucky) has no end user customer involved and therefore no revenue source from which to pay intercarrier compensation payments.

AT&T Kentucky is clearly a transit provider and not “functioning as an IXC” in the transport of facilities-based CLEC traffic and does not owe access charges to South Central Telcom for that traffic. This should be made clear in the *Order*.

Regardless of whether an end user of a facilities-based CLEC is “using another presubscribed IXC” (which language is in and of itself confusing and unclear in today’s competitive market), there is no law, contract between AT&T Kentucky and facilities-based CLECs, or evidence presented in this case that would support a finding that the calls made under the described circumstances should be deemed to have originated on AT&T Kentucky’s network. In the scenario described, AT&T Kentucky does not act as an IXC and is not the default IXC provider for those calls as the *Order* implies. Such calls are made between two CLECs – a facilities-based CLEC, whose customer originates the call, and South Central Telcom, whose customer receives the call. As explained above, the facilities-based CLEC is the only carrier that receives revenue from the originating end user and is thus in the best (and appropriate) position to compensate the terminating carrier. AT&T Kentucky, on the other hand, has absolutely no relationship to the end user and receives no revenue from the calling party. Any revenue that AT&T Kentucky may receive from the originating carrier for transiting the call covers AT&T Kentucky’s cost of switching and transporting the call on the AT&T

Kentucky network and does not take into account payment of intercarrier compensation to the terminating carrier, which under current law and practice has typically been the responsibility of the originating carrier or the carrier with whom the *end user* has contracted to carry toll calls.⁹

Pursuant to the terms of the KRSP entered into between AT&T Kentucky and certain ICOs several years ago, the parties to that agreement agreed that AT&T Kentucky would serve as the default intraLATA toll provider in cases where customers of ICOs had not presubscribed to another long distance provider.¹⁰ No CLECs, facilities-based or otherwise, were or are parties to that agreement and are not covered by the agreement. The Commission specifically acknowledged this fact in its Order when it concluded:

Although AT&T Kentucky has an established arrangement with RLECs in Kentucky for the exchange of intrastate toll traffic, this arrangement does not cover, nor was it contemplated to include, CLEC-originated traffic that is transited by AT&T Kentucky to RLECs¹¹ such as South Central Rural.¹²

While AT&T Kentucky, pursuant to the KRSP, has served as the default intraLATA toll carrier for customers of RLECs who did not presubscribe to a long distance carrier, that arrangement was with the RLECs by agreement and AT&T Kentucky receives payment as the long distance provider for those intraLATA toll calls from the end user customers who originate those calls.¹³ AT&T Kentucky has no agreement with facilities-based

⁹ *Pellerin Direct* at 25.

¹⁰ See KRSP, Exhibit C, Addendum 1, Sec. 6a, at 2 ("Subtending Category B LECs [ICOs] will route all 1+ and 0+10- intraLATA traffic to a Category A LEC [AT&T Kentucky]. (The exception will be intra-company traffic switched by Category B LECs.)") See also, *id.*, Sec. 6c ("The category A LECs [AT&T Kentucky] will have the right to perform operator functions on intraLATA service provided under the Category A LECs [AT&T Kentucky] toll tariffs.")

¹¹ Nor does the KRSP cover, nor was it contemplated to include, CLEC-originated traffic that is transited by AT&T Kentucky to another CLEC, such as South Central Telcom.

¹² *Order* at 9 (emphasis added).

¹³ See fn. 5 *supra*.

CLECs to serve as their default intraLATA toll carrier in any circumstances and does not receive payment from any end users for the calls made by customers of facilities-based CLECs that transit AT&T Kentucky's network. *Tr.* at 57 ("it is the originating carrier, not AT&T Kentucky, that has the end-user revenue associated with these calls. This is consistent with the calling party's network pays policy, sometimes referred to as the originating carrier pays policy, which the FCC and this Commission have adopted.") Such calls are transit traffic for which the originating carriers (the facilities-based CLECs) should pay.

AT&T Kentucky is the third party provider that merely transits the call but does not receive any revenue as the long distance provider from the facilities-based CLEC's end user customer who placed the call. *Id.* Nor does AT&T Kentucky receive compensation from the originating carrier for the call other than the compensation it receives for "performing the transit function itself, but not for call termination." *Tr.* at 93. AT&T Kentucky should not be obligated to pay access charges for a call for which it has no revenue. The call is originated on the facilities-based CLEC's network. Consistent with this Commission's *Order*, and its previous orders, the "calling party's network pays." In this case the "calling party's network" is the facilities-based CLEC, not AT&T Kentucky.

The KRSP applies only to RLECs by agreement with AT&T Kentucky. There has been no such agreement between AT&T Kentucky and CLECs, facilities-based or otherwise, and the Commission cannot impose such an agreement on the parties when neither has negotiated or agreed to it.

II. The Commission's Finding and Conclusion in the First Full Paragraph on Page 13 of Its Order Are Inconsistent with Its "Long Applied Principle that the 'Calling Party's Network Pays'" and with Other Findings and Conclusions in the Order.

The language in the first full paragraph on page 13 of the *Order* is inconsistent with this Commission's "long applied principle that the 'calling party's network pays.'" which the Commission reiterated in its *Order*. *Id.* at 12 (emphasis added) (citations omitted). The Commission specifically found that "[i]n the current case, the 'calling party's network' is the originating network from which the call to an end-user of South Central is placed." *Id.* In the scenario in which the customer of a facilities-based CLEC places a call, local or otherwise, to a customer of South Central Telcom, another CLEC, the "calling party's network" is the facilities-based CLEC's network from which the call was placed. There is no agreement with any facilities-based CLEC that AT&T Kentucky will serve as the default intraLATA toll provider in that or in any situation. Nor is there any law that requires such or evidence in the record to support it. And to the extent the originating facilities-based CLEC simply categorizes all intraLATA traffic as local (and thus eliminates the need for "1+" dialing, that unilateral decision of the originating CLEC cannot impose upon AT&T Kentucky an obligation to pay terminating access to the terminating carrier where AT&T Kentucky offers only a transit function.

In fact, that finding and conclusion are inconsistent with the Commission's long applied principle that the "calling party's network pays," which "has also been upheld by federal courts and is consistent with 47 C.F.R. § 51.703(b)."¹⁴ Moreover, it is in direct conflict with the Commission's finding regarding the same calling scenario as it relates to a local call:

¹⁴ *Order* at 12.

If, however, the calling party is a customer of a facilities-based CLEC or other ICO within AT&T Kentucky's service area and the customer places a local call to South Central, the call originates on the facilities-based CLEC's or ICO's network. ... In those instances, the 'calling party's network' is the facilities-based CLEC or ICO and is the party that should be responsible for compensation for local traffic.

Order at 12-13. There is no reason to differentiate between a local and non-local call placed by a customer of a facilities-based CLEC to South Central Telcom for determining which carrier is responsible for paying for the traffic as it relates to a third party carrier such as AT&T Kentucky.¹⁵ Whether the call is a local or a non-local or long distance call, the call neither originates nor terminates on AT&T Kentucky's network – it merely passes through it and is transit traffic for which the "calling party's network pays." The Commission should so find and modify its *Order* accordingly.

III. A Customer of an ICO Cannot Be Located "Within AT&T Kentucky's Service Area."

Simply and succinctly stated, a calling party who is a customer of an *ICO* would not be located "within AT&T Kentucky's service area," therefore, such a scenario could not occur and the references to the *ICO* in that scenario should be stricken.

¹⁵ The KRSP does provide for such a differentiation when the customer placing the call is the customer of an *ICO* and has not presubscribed to a long distance carrier. But as indicated *supra*, and as acknowledged by the Commission in its *Order* at 9, the KRSP does not cover CLEC-originated traffic nor was it contemplated that it would cover such traffic; therefore, such a differentiation cannot be made for facilities-based CLEC-originated traffic based on the KRSP. It should also be noted that the KRSP was entered into in 1992 before 1+ competition was implemented. The KRSP provides for termination of the agreement upon the 1+ implementation but the parties have not moved forward to terminate it. *KRSP* at 2 ("The Kentucky Restructured Settlement Plan is intended . . . to cease at such time as intralATA facility based competition and 1+ presubscription are in place.")

CONCLUSION

For the reasons stated herein, AT&T Kentucky respectfully requests that the Commission modify and clarify its June 22, 2010, *Order* by eliminating the first full paragraph on page 13 of the *Order* as indicated herein, and clarify that in the scenarios described in that paragraph AT&T Kentucky is a transit provider and is not responsible for paying access charges to South Central Telcom for the toll calls made in those scenarios. In addition, AT&T Kentucky requests the Commission extend the time within which the Parties have to file a traffic exchange agreement to 60 days following the Commission's order on this motion.




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CERTIFICATE OF SERVICE – PSC 2006-00448

I hereby certify that a copy of the foregoing was served on the following individual
by mailing a copy thereof, this 12th day of July 2010.

Honorable John E. Selent
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500 West Jefferson Street
Louisville, KY 40202


Mary K. Keyer