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David L. Armstrong  
Chairman

James Gardner  
Vice-Chairman

John W. Clay  
Commissioner

October 29, 2008

RE: Case No. 2008-00351

We enclose one attested copy of the Commission's Order in the above case.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Stumbo".

Stephanie Stumbo  
Executive Director

SS/tw  
Enclosure

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601 West Chestnut Street, Room 408  
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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CORETEL KENTUCKY, INC. )  
FOR APPROVAL OF INTERCONNECTION )  
AGREEMENT BETWEEN SOUTHWESTERN ) CASE NO. 2008-00351  
BELL TELEPHONE COMPANY D/B/A AT&T )  
KANSAS AND CORETEL KANSAS PURSUANT )  
TO AT&T MERGER CONDITIONS )

O R D E R

On August 14, 2008, CoreTel Kentucky, Inc. ("CoreTel") requested that the Commission approve an interconnection agreement between Southwestern Bell Telephone Company d/b/a AT&T Kansas and CoreTel Kansas ("Kansas Agreement"). CoreTel stated that it was seeking to port and adopt this interconnection agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky").<sup>1</sup> On September 3, 2008, AT&T Kentucky submitted a response objecting to CoreTel's filing. The Commission issued a procedural schedule on September 15, 2008, wherein the parties were given time to submit additional pleadings in support of their arguments.<sup>2</sup>

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<sup>1</sup> See Kansas Corporation Commission, Docket No. 09-SWBT-096-IAT. The agreement was filed with the Kansas Corporation Commission ("Kansas Commission") by AT&T Kansas on July 25, 2008. The Kansas Commission approved the agreement by Order dated August 29, 2008.

<sup>2</sup> CoreTel submitted a reply on September 22, 2008 and AT&T Kentucky submitted a sur-reply on October 1, 2008.

In support of its request for approval of the Kansas Agreement, CoreTel argues that it has the right, under the AT&T-BellSouth Merger Commitments,<sup>3</sup> to port and adopt an interconnection agreement from any state within AT&T's 22-state region. Specifically, CoreTel cites Merger Commitment 7.1 which provides, in part, that AT&T-BellSouth shall make available to any requesting telecommunications carrier any entire effective interconnection agreement that AT&T-BellSouth entered into in any state in the AT&T-BellSouth 22-state territory.<sup>4</sup> The merger commitment also provides that the agreement requested for porting by another carrier must be made available to that carrier subject to the specific pricing and performance plans of the new state. The agreement must also be subject to technical feasibility in the new state.<sup>5</sup> And lastly, the merger commitment provides that AT&T-BellSouth is not obligated to provide an agreement unless it is consistent with the laws and regulatory requirements of the state to which a requesting carrier seeks to port it.<sup>6</sup>

CoreTel alleges that AT&T Kentucky is acting in bad faith by delaying the porting of the Kansas Agreement. CoreTel contends that AT&T Kentucky has failed to explain why changes to the Kansas Agreement are appropriate for Kentucky, with the exception

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<sup>3</sup> On December 29, 2006, the Federal Communications Commission ("FCC") approved the merger of AT&T, Inc. and BellSouth Corporation (the parent company to BellSouth Telecommunications). AT&T and BellSouth also closed their corporate merger on December 29, 2006. On March 26, 2007, the FCC issued its formal Order authorizing the merger (*In the Matter of AT&T, Inc. and Bellsouth Corporation Application for Transfer of Control*, 22 FCC Rcd 5662; WC Docket 06-74). This Order contained certain voluntary merger commitments to be followed by the new AT&T-BellSouth corporate entity.

<sup>4</sup> Id. at Merger Commitment 7.1.

<sup>5</sup> Id.

<sup>6</sup> Id.

of appending Kentucky pricing and performance plans.<sup>7</sup> CoreTel alleges that, because AT&T Kentucky is extending the time period under which it is producing changes and modifications to the Kansas Agreement to conform to the requirements for Kentucky and the other AT&T, Inc. states, it is keeping CoreTel from doing any business in Kentucky.<sup>8</sup> CoreTel claims that, despite its requests, for 3 months, AT&T Kentucky failed to explain how the proposed changes could be legitimately tied to the AT&T-BellSouth Merger Conditions and that, in some instances, the proposed changes are too vague to be meaningful.<sup>9</sup> As part of its efforts to enter into the Kentucky markets as soon as possible, CoreTel also states that it has accepted the majority of AT&T Kentucky's amendments as they have minimal impact on CoreTel's business plan. However, the company lists several sections of the agreement which it defines as critical and to which it is not willing to accept any unsubstantiated changes.<sup>10</sup>

AT&T Kentucky argues that the Commission should not entertain CoreTel's request and should not take further action at this time. In its initial response objecting to CoreTel's request for approval, as well as in its sur-reply, AT&T Kentucky states that since June 23, 2008, the date upon which it received notice of CoreTel's desire to port the Kansas Agreement, it has worked to identify changes and communicate the needed revisions to CoreTel. AT&T Kentucky contends that CoreTel's request is unique as the company specifically requested to port the Kansas Agreement to the other 21 states

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<sup>7</sup> CoreTel's Letter to the Commission received on August 14, 2008.

<sup>8</sup> CoreTel's sur-reply at 3, 4.

<sup>9</sup> Id. at 4, 5.

<sup>10</sup> Id. at 6, 7.

where AT&T, Inc. serves as an incumbent carrier. AT&T Kentucky asserts that various drafts and potential revisions of the modified agreement were sent to CoreTel on July 29, 2008, August 8, 2008, August 21, 2008, and September 25, 2008.<sup>11</sup> AT&T Kentucky states that it has provided CoreTel with two versions of a potential agreement – one version which applies to the 21 AT&T states and a second version applying only to Kentucky – as well as explanations for a Kentucky-specific agreement compliant with the Merger Commitment.<sup>12</sup> AT&T Kentucky acknowledges, however, that, to date, the parties have not reached any agreement that could be considered as final, but requests that the Commission decline to take action and allow the parties to engage in a collaborative process to finalize the agreement.<sup>13</sup>

#### DISCUSSION

Having reviewed the arguments, as well as the agreement submitted by CoreTel, the Commission finds that CoreTel's request for approval should be dismissed as premature. The parties have not achieved a meeting of the minds on a completed agreement. As no completed agreement exists, the Commission can render neither an approval nor rejection of that agreement under the authority of 47 U.S.C. § 252. The Commission disagrees with CoreTel's argument that AT&T Kentucky has deliberately delayed the implementation of relevant contract changes. AT&T Kentucky has provided convincing rebuttal arguments and evidence to substantiate that it is making good-faith

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<sup>11</sup> AT&T Kentucky's response at 3 and sur-reply at 3.

<sup>12</sup> AT&T Kentucky's sur-reply at 3.

<sup>13</sup> Id. at 6.

efforts to develop an agreement that can be used by the parties within Kentucky.<sup>14</sup> AT&T Kentucky is acting within a reasonable length of time to identify and modify provisions of the Kansas Agreement that must be changed to comport with the technical and legal requirements for the provision of service in this state. Thus, the Commission cannot issue a Section 252(e) decision for a document that does not exist in its completed and applicable form. The Commission concludes that this matter is not ripe for any level of state approval and, consequently, dismissal is appropriate.<sup>15</sup>

The Commission finds that an informal conference is not needed because this matter, as currently filed, will be dismissed.<sup>16</sup> The Commission encourages the parties to continue negotiations toward completion of their interconnection agreement.

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<sup>14</sup> See Attachments 1 through 5 of AT&T Kentucky's sur-reply, filed on October 1, 2008.

<sup>15</sup> At this time, the Commission will not make any interpretation as to whether CoreTel is entitled to port and adopt the Kansas Agreement pursuant to Merger Commitment 7.1 of the FCC's Merger Order for AT&T-BellSouth. However, the Commission has previously determined that 47 U.S.C. § 252(i) and 47 C.F.R. § 51.809 provide an independent basis for the adoption of interconnection agreements. See Case No. 2007-00256, *Adoption by NPCR, Inc. d/b/a Nextel Partners of the existing Interconnection Agreement by and between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company, L.P., Sprint Spectrum L.P.* (final Order dated Dec. 18, 2007 and Order on Rehearing dated Feb. 18, 2008). Those rulings stand as they were not appealed and have not been superseded or preempted by federal law or by any order of the FCC (as of the date of this Order).

<sup>16</sup> 47 U.S.C. § 252(a)(2) provides that "[A]ny party negotiating an agreement under this section may, at any point in the negotiation, ask a State Commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation."



IT IS THEREFORE ORDERED that:

1. CoreTel's application for approval of the Kansas Agreement is denied.
2. This case is dismissed and is removed from the Commission's docket.

Done at Frankfort, Kentucky, this 29th day of October, 2008.

By the Commission

Chairman Armstrong abstains.

ATTEST:

  
Executive Director

Case No. 2008-00351