

COMMONWEALTH OF KENTUCKY

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BEFORE THE PUBLIC SERVICE COMMISSION

MAY 05 2010

PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF CRICKET COMMUNICATIONS, )
INC. FOR ARBITRATION OF RATES, TERMS )
AND CONDITIONS OF INTERCONNECTION )
WITH BELLSOUTH TELECOMMUNICATIONS, )
INC. D/B/A AT&T KENTUCKY )

Case No. 2010-00131

JOINT MOTION TO CONSIDER THRESHOLD ISSUES
AND PROPOSED BRIEFING/PROCEDURAL SCHEDULE

Cricket Communications, Inc. ("Cricket") and BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky") (hereafter, Cricket and AT&T Kentucky may be collectively referred to as the "Parties") hereby petition the Commission to bifurcate this proceeding in order that the Commission may first make legal determinations on two threshold issues:

1) whether the Commission has jurisdiction in this proceeding to adjudicate whether the current term of Cricket's interconnection agreement ("ICA") with AT&T Kentucky shall be extended pursuant to Merger Commitment 7.4 and, if so, whether the ICA shall be extended pursuant to Merger Commitment 7.4<sup>1</sup>; and

2) whether AT&T Kentucky must provide transit traffic service to Cricket for intrastate traffic pursuant to terms and conditions in the ICA arbitrated in this proceeding.

1 See In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control, Memorandum Opinion and Order, 22 FCC Rcd 5662, APPENDIX F, "Reducing Transaction Costs Associated with Interconnection Agreements" paragraph No. 4: "The AT&T/BellSouth ILECs shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years, subject to amendment to reflect prior and future changes of law. During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's 'default' provisions."

As grounds for this Motion the Parties state that administrative efficiency weighs strongly in favor of deciding these two threshold issues at this initial stage of this case. Recently the Commission's staff has encouraged parties to brief threshold issues first and consent to adjustments in the arbitration timeframe to allow the Commission to first deal with issues that may be dispositive of the case. For example, in Case No. 2009-00438,<sup>2</sup> which is currently pending before the Commission, staff suggested during the initial informal conference that parties consider filing briefs on whether it was appropriate to include issues related to competitive 911/E911 services in the arbitration. The parties agreed, filed briefs on the legal issue, then proposed a procedural schedule that the Commission could use to determine any remaining issues after it ruled on the threshold jurisdictional matter. On April 9, 2010, the Commission issued its order on the threshold question and adopted a procedural schedule to resolve all remaining issues.

In this case the ICA term extension issue is appropriately treated as a threshold issue because if the Commission concludes that the term of the Parties' current ICA shall be extended, all other disputed issues (including the second threshold issue, concerning transit traffic service) will be moot.

If the Commission concludes that it is without jurisdiction to determine whether the current ICA shall be extended pursuant to Merger Commitment 7.4, or that the current agreement shall not be extended, the question whether terms governing transit traffic service must be included in a Section 251/252 ICA will appropriately be treated as a threshold issue. The Parties have disagreements concerning contractual language governing transit traffic service, and those disagreements would appropriately be arbitrated in this proceeding if and only if the Commission first determines that AT&T Kentucky is required to provide transit traffic service to

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<sup>2</sup> *Petition of Communications Venture Corporation d/b/a INdigital Telecom for Arbitration with BellSouth Telecommunications, Inc.*

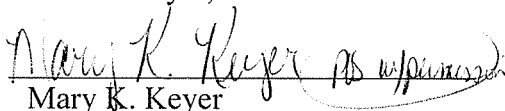
Cricket for intrastate traffic pursuant to terms and conditions in an ICA arbitrated in this proceeding.

Resolution of the threshold issues will place the Commission in the position of then proceeding to resolve, to the extent necessary and appropriate in light of the resolution of the threshold issues, the disputed issues identified in Cricket's Petition, and AT&T Kentucky's Response thereto.

WHEREFORE, the Parties respectfully request that the Kentucky Public Service Commission adopt the proposed briefing/procedural schedule attached as Exhibit A, and then grant the following relief:

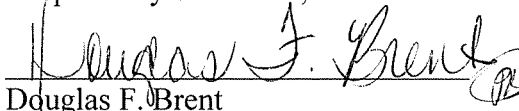
1. Determine whether the Commission has authority to arbitrate in this proceeding the question whether Merger Commitment 7.4 entitles Cricket to extend the term of the Parties' current ICA and, if so, whether the current term of the ICA shall be extended pursuant to Merger Commitment 7.4;
2. Determine whether AT&T Kentucky must provide transit traffic service to Cricket for intrastate traffic pursuant to terms and conditions in an ICA arbitrated in this proceeding; and
3. Enter further procedural orders as necessary.

Dated: May 5, 2010

  
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Respectfully submitted,

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

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INC. D/B/A AT&T KENTUCKY )	

**PROPOSED BRIEFING/PROCEDURAL SCHEDULE**

Initial Briefs on Threshold Issues	May 19, 2010
Reply Briefs	June 2, 2010
Initial Decision	June 30, 2010
Joint Scheduling Proposal (as appropriate in light of Initial Decision on threshold issues)	July 9, 2010
Initial Joint Issues Matrix	
First Data Requests <sup>3</sup>	
Responses and Objections to Data Requests	
Ruling on Objections to Data Requests	
Simultaneous Direct Testimony	
Second Data Requests	
Responses and Objections to Second Data Requests	
Ruling on Objections to Data Requests	
Simultaneous Rebuttal Testimony	
Final Joint Issues Matrix	

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<sup>3</sup> The Parties have agreed that each Party may propound a total of no more than 40 data requests, including subparts, in the two rounds of data requests. That Parties have also agreed that data requests will be limited to inquiries into factual matters, and shall not be used to elicit positions or legal or policy grounds for positions.

Hearing

Simultaneous Post-Hearing Briefs

30 days after transcript

Simultaneous Reply Briefs

20 days after initial briefs

Commission Decision

45 days after reply briefs