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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Charles R. Borders
Commissioner

June 3, 2010

PARTIES OF RECORD

Re: Case No. 2010-00161

Attached is a copy of the memorandum which is being filed in the record of the above-referenced case. If you have any comments you would like to make regarding the contents of the informal conference memorandum, please do so within seven days of receipt of this letter. If you have any questions, please contact Tiffany Bowman at 502/564-3940, Extension 465 or by email at TiffanyJ.Bowman@ky.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen".

Jeff Derouen
Executive Director

JD/tb

Attachment

INTRA-AGENCY MEMORANDUM

KENTUCKY PUBLIC SERVICE COMMISSION

TO: Main Case File

FROM: Tiffany Bowman
Staff Attorney

DATE: June 2, 2010

SUBJECT: Case No. 2010-00161

NOTICE OF EXPRESS PHONE SERVICE, INC.'S INTENT TO ADOPT
THE INTERCONNECTION AGREEMENT BETWEEN BELL SOUTH
TELECOMMUNICATIONS, INC. D/B/A AT&T KENTUCKY AND NEW
TALK, INC.

Informal Conference Memorandum

An informal conference ("IC") was held in this matter on Tuesday, June 1, 2010. A copy of the conference attendance list is attached. The purpose of the IC was to discuss the parties' positions as to Express Phone's expression of intent to adopt an existing interconnection agreement.

During the course of the IC, the parties and Commission Staff discussed the following issues:

- Commission Staff requested information as to the status of Express Phone's request to adopt the New Talk/BellSouth agreement in the state of Florida. The parties indicated they did not know if the notice had been filed with that state commission.
- Parties stated that the expiration of the Express Phone agreement occurs in November 2011.
- Express Phone stated that the PSC should look at Section 251(i) and the SouthEast Telephone case (page 653) for the federal court's interpretation of that section; Express Phone argued that the decisions of other state commissions on this issue are not necessarily relevant.
- Commission Staff asked if section 12.2 of the current Express Phone ICA was applicable to this situation. AT&T stated that by giving CLECs the right to adopt a new agreement at any time would cause confusion in the marketplace; AT&T argued that to allow the adoption would be a violation of contract law; AT&T stated that Express Phone is bound by the current

agreement and if allowed to adopt the New Talk agreement it would be in violation of the “pick and choose” rule.

- Express Phone stated it is not taking parts of the New Talk agreement to the exclusion of others and doesn't see how basic contract terms would be violated.
- Commission Staff noted that the current agreement between Express Phone and AT&T is “global” – meaning it applies to all 9 states within the legacy BellSouth region; Express Phone stated that the New Talk agreement would become solely a Kentucky agreement and would not be applied to the other BellSouth legacy states.
- AT&T stated that Express Phone currently owes a large sum of money under the current resale agreement and the money owed is several months past due; AT&T also stated that Express Phone has previously conveyed that it is seeking to gain Kentucky ETC status – AT&T stated that if that is the primary goal, AT&T can help Express Phone achieve it under the current agreement.
- Commission Staff asked if the resale agreement had been negotiated or was simply a standard AT&T ICA -- AT&T stated that it was unaware if negotiations occurred.
- Commission Staff stated the parties would be given additional time to submit supplemental pleadings – but AT&T asked for additional time for discussions with Express Phone.
- The parties agreed to submit an e-mail to Commission Staff Attorney Tiffany Bowman by Tuesday, June 8, 2010 indicating if they desired to submit supplemental pleadings prior to the Commission rendering a ruling.

The informal conference then adjourned.

Attendance Sheet

IC - June 1, 2010 - 11:00 AM

Case: 2010-00161

Name:

Tiffany Bowman

PSC

Jim Stevens
Kyle Willard

PSC
PSC

JEB Pinney

PSC

By Phone:

Jim Tipton

- AT&T

Mary Keyer

- AT&T

Doug Brent

ExpressPhone