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July 16, 2010

VIA OVERNIGHT MAIL

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

RECEIVED

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**PUBLIC SERVICE
COMMISSION**

Re: AT&T Communications of the South Central States, TCG Ohio, and BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky, Complainants v. Kentucky Rural Incumbent Local Exchange Carriers, Kentucky Competitive Local Exchange Carriers, Windstream West, LLC, Windstream East, LLC, and Cincinnati Bell, Respondents
PSC 2010-00162

Dear Mr. Derouen:

Enclosed for filing in the above-captioned case are original and ten (10) copies of AT&T's Response in Opposition to Initial Statement of PAETEC.

Should you have any questions, please let me know.

Sincerely,


Mary K. Keyer

Enclosures

cc: Parties on attached Certificate of Service

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
AT&T COMMUNICATIONS OF THE)
SOUTH CENTRAL STATES, TCG OHIO,)
AND BELL SOUTH TELECOMMUNICATIONS,)
INC., d/b/a AT&T KENTUCKY,)
)
Complainants)
)
v.) CASE NO.
) 2010-00162
KENTUCKY RURAL INCUMBENT LOCAL)
EXCHANGE CARRIERS, KENTUCKY)
COMPETITIVE LOCAL EXCHANGE)
CARRIERS, WINDSTREAM WEST, LLC,)
WINDSTREAM EAST, LLC, AND)
CINCINNATI BELL)
)
Respondents)

**AT&T'S RESPONSE IN OPPOSITION
TO INITIAL STATEMENT OF PAETEC**

AT&T Communications of the South Central States, TCG of Ohio, BellSouth Long Distance Inc. d/b/a AT&T Long Distance Service, and BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (collectively, "AT&T"), respectfully submit their response to the initial statement filed by US LEC of Tennessee, L.L.C., d/b/a PAETEC Business Services ("PAETEC").

DISCUSSION

Unwilling to defend its excessive intrastate switched access rates on the merits – and equally unwilling to talk about the harm that those excessive rates are wreaking on Kentucky consumers – PAETEC tries to evade the

Commission's scrutiny by tossing out a series of procedural gimmicks. None of PAETEC's arguments has any merit. The Commission should not delay the review and reform that Kentucky consumers have been awaiting for years.

1. PAETEC first argues (at 2) that the Commission is handcuffed by its own rules and cannot open "a generic proceeding of the nature AT&T requests." Instead, PAETEC presumably would have the Commission engage in a series of individual investigations of the access rates of each of the *200-plus* local exchange carriers ("LECs") operating in Kentucky.

Certainly, KRS 278.260(1) (cited at PAETEC Stmt., p. 1) does not require such absurd, harmful and wasteful results. To the contrary, the statute gives the Commission broad discretion "to make such investigation as it deems necessary or convenient." Likewise, PAETEC points to no rule of procedure that precludes a generic proceeding – as is clear from PAETEC's inability to provide any citation other than a broad-brush reference to "the requirements of 807 KAR 5:001."

More to the point, a generic proceeding involving all of the local exchange carriers in Kentucky is an efficient and effective forum for dealing with the common problem of implicit subsidies that infects the access rates of virtually all LECs. AT&T offers straightforward reforms that work equally well for all carriers, and that many states have already adopted: namely, reducing the intrastate rates of incumbent LECs to parity with their corresponding interstate rates, and capping the intrastate rates of competitive LECs at the level of the incumbents with which they compete. In each case, the Commission would be tracking significant forms already adopted for interstate calls by the FCC, and the LECs

would simply be charging the exact same rates on in-state calls that they have been charging for years on interstate calls. While AT&T proposes a solution that works for all LECs, PAETEC is perfectly free to present evidence – if it has any – to show that its situation is different. With the monopoly-era switched access regime crumbling, it makes no sense to bog down reforms that Kentucky consumers urgently need or to waste the Commission’s resources by conducting more than 200 separate proceedings to address the same issues more than 200 times.

2. It is just as absurd for PAETEC to suggest (at 4) that AT&T was required to recite and discuss every single access rate element that it contests for all 200-plus Kentucky LECs. No such requirement exists in any statute or rule. Nor would it make sense to invent such a requirement here. AT&T is not asking the Commission to tinker with some individual rate element. Rather, AT&T’s petition addresses a much more fundamental and severe problem: that the monopoly-era access regime that persists today is hurting Kentucky consumers, and is unsustainable, in its entirety. Moreover, the specific access rate elements for every LEC are matters of public record. PAETEC undoubtedly knows what its own intrastate rate elements are and what rates AT&T proposes (because AT&T simply proposes that PAETEC and other competitive LECs “cap” their intrastate rates at the level of the incumbent with which they compete, just as they already do for interstate calls). Reciting specific rate elements would be needless make-work, and PAETEC’s argument is simply another attempt to

impose needless delays on long-overdue reforms that Kentucky consumers need now.

3. Equally baseless is PAETEC's claim (at 3) that AT&T's proposed reforms would "reverse more than a decade of precedent and treatment of CLECs as competitive." Although CLECs' retail local exchange services may have been deemed competitive, PAETEC cites no "precedent" finding any CLEC's access services to be competitive. That is for a very good reason: CLEC access services are anything but "competitive." If an AT&T customer places a call to or from a PAETEC line, AT&T has no chance to "shop around" and no choice but to let the call go through and pay whatever access charge PAETEC imposes. Obviously, AT&T cannot block the call, nor can it tell customers not to choose PAETEC for local service. Thus, the FCC and several states have held that CLEC access services are *not* competitive, and that CLECs instead have market power over access to their end users.¹

"Precedent," then, is on AT&T's side, not PAETEC's. And the party seeking to "impose arbitrary prices . . . by regulatory fiat" is PAETEC, which has been imposing arbitrary access charges on AT&T and other wireline long distance providers (and thus, on the Kentucky consumers who buy long distance service from AT&T and other wireline long distance providers) for years.

4. Finally, PAETEC mischaracterizes AT&T's position. AT&T does not contend that its own intrastate switched access rates are "the sole possible legal

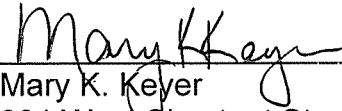
¹ *In re Access Charge Reform & Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923 (2001); see also, e.g., *In re Board's Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates*, N.J. Bd. Pub. Utils. Docket No. TX08090830, Order, Feb. 1, 2010.

rates” for CLECs. PAETEC Stmt., at 4. Rather, AT&T maintains – and the petition amply demonstrates – that the CLECs’ present rates are unjust and unreasonable because they harm Kentucky consumers, distort the competitive playing field, and hinder investment in the advanced broadband networks of tomorrow (by artificially subsidizing the legacy switched network). As a simple, meaningful step towards reform, AT&T proposes that the Commission “cap” competitive LECs’ rates at the level of the incumbent with which they compete (which in many areas, but not all, would be AT&T). Certainly, that is not the only legal rate (the Commission could choose a lower rate, such as one based on forward-looking economic cost of an efficient competitor) but it is a simple, reasonable approach that the FCC and other states have also taken. Plus, AT&T’s proposed cap makes perfect sense: if the access market were truly competitive, competition would force competitive LECs to meet or beat the rates charged by their leading competitor.

CONCLUSION

For the reasons set forth above, the Commission should consolidate this matter with the investigation of Verizon’s complaint challenging Windstream’s access charges, and establish an appropriate procedural schedule for the consolidated proceeding. A copy of AT&T’s second amended proposed procedural schedule is attached hereto as **Exhibit 1**.

Respectfully submitted,



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d/b/a AT&T LONG DISTANCE SERVICE, AND
BELL SOUTH TELECOMMUNICATIONS, INC.
d/b/a AT&T KENTUCKY

EXHIBIT 1

SECOND AMENDED PROPOSED PROCEDURAL SCHEDULE

August 2, 2010	Commission Issues Procedural Schedule
August 16, 2010	Parties Answer Complaint/Provide Comments
September 1, 2010	AT&T Responds to Comments
September 15, 2010	Workshop for All Interested Parties
September 30, 2010	First Data Requests
October 18, 2010	Responses to Data Requests
November 15, 2010	Simultaneous Prefiled Direct Testimony
November 30, 2010	Second Data Requests Limited to Issues in Direct Testimony
December 10, 2010	Responses to Second Data Requests
December 22, 2010	Simultaneous Prefiled Rebuttal Testimony
January 7, 2011	Third Data Requests Limited to Issues in Rebuttal Testimony
January 25, 2011	Responses to Third Data
Months of February/ March	Potential Hearing Dates

Simultaneous Post-Hearing Briefs: 30 days after receipt of hearing transcript

Simultaneous Post-Hearing Reply Briefs: 20 days after Post-Hearing Briefs

Commission Decision: 45 days after Post-Hearing Reply Briefs

CERTIFICATE OF SERVICE – PSC 2010-00162

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof via U.S. Mail, this 16th day of July 2010.

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