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AUG 14 2015

PUBLIC SERVICE
COMMISSION

August 13, 2015

Jeff R. Derouen, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602-0615

Case No. 2015-00283

Re: Application of Competitive Carriers of the South, Inc. for a Declaratory
Order Affirming that the Interconnection Regimes under KRS 278.530
and 47 U.S.C. § 251 are Technology Neutral

Dear Mr. Derouen:

Enclosed please find the original and ten (10) copies of the above-referenced Application for Declaratory Order to be filed on behalf of Competitive Carriers of the South, Inc. The Application seeks a declaration from the Commission on a legal questions of statutory construction; the requested declaration is the subject of Commission Staff Opinion 2013-015.

Also enclosed is an eleventh copy of the Application. Please stamp this additional copy with the date of Commission receipt and send it to me in the enclosed self-addressed envelope with return postage.

Thank you for your attention to this matter.

Sincerely,


Katherine K. Yunker

Enclosures

cc: Carolyn Ridley

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

The Application of Competitive Carriers of the South, Inc. for a Declaratory Order Affirming that the Interconnection Regimes under KRS 278.530 and 47 U.S.C. § 251 are Technology Neutral

Case No. 2015- 00283

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PUBLIC SERVICE
COMMISSION

Application of Competitive Carriers of the South, Inc.
for a Declaratory Order

Pursuant to 807 KAR 5:001, Section 19, Competitive Carriers of the South, Inc. (“CompSouth”) respectfully requests that the Kentucky Public Service Commission (“KPSC”) issue a declaratory order affirming that, regardless of underlying technology, transmission media, or protocol that may be used for the exchange of voice traffic between two carriers’ networks, (a) the interconnection regimes under 47 U.S.C. §§ 251-252 and KRS 278.530 apply and (b) these statutes permit (among other things) a requesting carrier to file a petition with the KPSC requesting an Order prescribing the rates, terms, and conditions of proposed interconnection with an incumbent local exchange carrier. The requested declaration will formalize the advisory PSC Staff Opinion 2013-015 (dated 10/24/13) as a binding decision of the KPSC.

1. The members of CompSouth who will participate herein are: Birch Communications, Inc.; EarthLink Business, LLC ; Level 3 Communications, LLC, Windstream Communications, Inc.; XO Communications, LLC. Each of these participating CompSouth members offers to provide and does provide voice services to end-user customers in Kentucky and elsewhere which use Internet Protocol (“IP”) format or which can be and are converted to IP format for purposes of transport.

2. CompSouth asks that Commission Orders and filings made or documents submitted by parties be served on:

Carolyn Ridley
Senior Director of State Public Policy
Level 3 Communications
2078 Quail Run Drive
Bowling Green, KY 42104
p: 615.584.7372
e: Carolyn.Ridley@Level3.com

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3. The participating CompSouth members will be substantially affected by the KPSC's decision in this declaration. For example, it is more efficient to simply exchange voice traffic that is in IP format than to covert such traffic to a more traditional format such as time division multiplexing ("TDM") solely for the purposes of handing off the traffic to another provider at an interconnection point. Without a declaration by the KPSC that the interconnection regimes of the above-cited statutes are technology neutral and that a carrier may file a petition for arbitration with the KPSC per said statutes, carriers are uncertain of their interconnection rights and obligations under the law as the Commonwealth of Kentucky and the nation undergo a transition from TDM to IP based voice services. That uncertainty, in turn, could have the effect of slowing the transition, as carriers will be faced with the choice of either a "take-it-or-leave-it," possibly discriminatory offer to interconnect in IP or continuing to interconnect in TDM with the added expense of converting their IP traffic to TDM solely for the purpose of interconnection, even though IP interconnection would be the more efficient, quality, and cost-effective method.

4. KRS Chapter 278 establishes two alternative procedures by which "any telephone company" may seek to compel interconnection with another "upon reasonable terms, rates and conditions." KRS 278.530(1). One procedure is by written application to the KPSC; if the KPSC orders the connection to be made, "it shall indicate the points where the connection is to

be made, the number of wires to be connected, the terms and conditions and the rates to be charged, and the division of the rates charged between the companies handling the messages.” KRS 278.530(2). The alternative is to file an injunctive action in the Franklin Circuit Court. KRS 278.530(3).

5. Title 47 U.S.C. § 251(a)(1) imposes on each telecommunications carrier the duty “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.” Section 251(c) imposes additional duties on incumbent local exchange carriers, including that interconnection be “on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.” 47 U.S.C. § 251(c)(2)(D).

6. Among other things related to the duties imposed on incumbent local exchange carriers, 47 U.S.C. § 252 provides in subsection (b) for interconnection agreements to be arrived at through compulsory arbitration before a state commission such as the KPSC; and in subsection (d)(1) for a determination by a state commission “of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251 of this title....” It also mandates: “Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission.” 47 U.S.C. § 252(e).

7. The statutory interconnection procedures, rights, and obligations of KRS 278.530 and 47 U.S.C. §§ 251 -25 are not limited to a particular technology, transmission media, or protocol. Furthermore, authoritative construction of the scope of state and federal regulatory regimes supports the common-sense proposition that these interconnection rules apply regardless of the technology used to provide voice service, as described briefly below.

8. The Chapter 278 definition of a telecommunications “utility” encompasses any “facility” used in the “transmission or conveyance over wire, in air, *or otherwise*, of any message by telephone or telegraph for the public, for compensation,” KRS 278.010(3)(e) (emphasis added). “Facility” is broadly defined to include “*all property, means, and instrumentalities ... used ... in connection with the business of any utility,*” KRS 278.010(11) (emphasis added). Similarly, the Chapter 279 statutory definition of “telephone company” refers to individuals or entities owning or operating “*any line, facility, or system used in the furnishing of telephone service within this state.*” KRS 279.310(12) (emphasis added). The Kentucky Court of Appeals noted that communications technology had changed since statutes regulating telephone companies had been enacted; however —

This fact does not mean that telephone companies become something else simply because they use improved communication techniques.

Central Ky. Cellular Tel. Co. v. Revenue Cabinet, 897 S.W.2d 601, 605 (Ky. App. 1995) (upholding treatment of wireless carrier as a “telephone company” under state tax statute).

9. The Federal Communications Commission (“FCC”) has described the text of 47 U.S.C. § 251 as “technology neutral” and found that carriers’ interconnection obligations thereunder are not limited to circuit-switched voice traffic. *Connect America Fund*, WC Dkt. No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶¶ 1342, 1381 (2011). “The duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise.” *Id.* ¶ 1011.

10. In an advisory opinion, the KPSC staff generally concluded that “the interconnection regimes under KRS 278.530 and 47 U.S.C § 251 are technology neutral.” PSC Staff Opinion 2013-015, p.5. The KPSC staff further concluded:

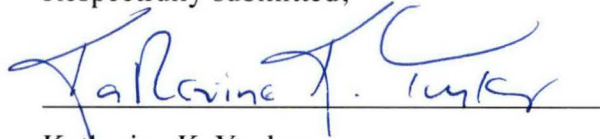
[T]he current interpretation of 47 U.S.C. § 251 allows a carrier to file a petition for arbitration under 47 U.S.C. § 252 and seek interconnection regardless of the underlying technology. Kentucky law does not prohibit this result, nor does the current state of the FCC or federal law. However, each petition for arbitration stands on its own, and each case is 'tied to factual circumstances or otherwise circumscribed in various ways' and does not guarantee interconnection with an IP network.

Id. p.5. CompSouth now asks that the KPSC address this subject and issue a binding declaratory order as requested.

WHEREFORE, Competitive Carriers of the South, Inc. respectfully requests a declaratory order affirming that regardless of underlying technology, transmission media, or protocol,

- (a) the interconnection regimes under 47 U.S.C. §§ 251-252 and KRS 278.530 apply, and
- (b) these statutes permit (among other things) a requesting carrier to file a petition with the KPSC requesting an Order prescribing the rates, terms, and conditions of proposed interconnection with an incumbent local exchange carrier.

Respectfully submitted,



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ATTORNEY FOR APPLICANT,
COMPETITIVE CARRIERS OF THE SOUTH, INC.