

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

RE:

Docket No. 19-00099

**AT&T Tennessee Complaint Against
Cellular South, Inc. d/b/a C Spire**

**RESPONSE IN OPPOSITION TO MOTION TO DISMISS OR SUSPEND THE
COMPLAINT**

Pursuant to TPUC Rule 1220-01-02.06, BellSouth Telecommunications, LLC d/b/a AT&T Tennessee (“AT&T”) states as follows in response to the Motion to Dismiss or Suspend the Complaint (“Motion”) filed by Cellular South, Inc. d/b/a C Spire (“C Spire”):

I. INTRODUCTION

This case arises out of a dispute under the Interconnection Agreement (“ICA”) entered into between AT&T and C Spire. The Complaint filed before the Tennessee Public Utility Commission (“TPUC”) alleges that C Spire improperly used outdated and/or estimated factors when calculating amounts AT&T owed to C Spire under the ICA in four states: Tennessee, Mississippi, Alabama, and Florida. The improper use of the outdated and/or estimated factors resulted in overpayments by AT&T to C Spire in each of the four states. The Complaint requests that C Spire be directed to refund to AT&T the Tennessee portion of the overpayments¹.

In the Motion, C Spire argues that because there is already a case pending before the Mississippi Public Services Commission over the same dispute, this matter should be dismissed

¹ AT&T has sought \$422,524 in refunds from C Spire. A significant portion of those amounts (\$234,104 or about 55% of the total) relate to Tennessee facilities. The remainder of the amounts at issue involve facilities in Alabama, Florida, and Mississippi. Matters involving issues in those states are clearly beyond the jurisdiction of this Commission. The Complaint pending in Mississippi can and will address the amount at issue in that state.

and/or stayed pending the outcome of that proceeding. (Motion at 2). Specifically, C Spire argues that because the Mississippi action is pending, “it is not clear whether the Tennessee Commission has subject matter jurisdiction over this dispute.” (*Id.*). C Spire further argues that this action should be stayed and/or dismissed because any ruling by the Mississippi Commission may be persuasive precedent for this Commission to consider and may further lead to renewed settlement negotiations that could lead to a resolution of the entire dispute. Each of these arguments is without merit.

II. THE TENNESSEE PUBLIC UTILITY COMMISSION HAS SUBJECT MATTER JURISDICTION.

In the Motion, C Spire argues for dismissal of this action by stating that “it is not clear whether the Tennessee Commission has subject matter jurisdiction over this dispute.” (Motion at 2). This argument is wholly without merit.

The Tennessee Supreme Court has recognized for decades TPUC's exclusive and extremely broad authority over public utilities. In *Breeden v. Southern Bell Tel. & Tel. Co.*, 199 Tenn. 203 (Tenn. 1955), a group of citizens brought suit against a telephone company, claiming the company failed to extend telephone service to their community. The Court found the dispute fell under the jurisdiction of TPUC, going back to the original Public Utilities Commission Law passed in 1897, and noting that despite numerous amendments over the years:

For more than one-half of a century this enactment has been the declared public policy with reference to public utilities. **During all of this time the exclusive jurisdiction of the Commission, in the first instance, over public utilities has been questioned about various things but has always been resolved in favor of the Utilities Commission's exclusive jurisdiction** on the question of rates, etc., in accordance with the general authorities over the United States touching such questions.

Breeden, at 207 (emphasis added). The Court further noted that “the Act shall be liberally construed and ‘shall be resolved in favor of the existence of the power, to the end that the

[C]ommission may effectively govern and control the public utilities.” *Id.* at 211. The Court explained the exclusive power afforded TPUC extends so far that in one criminal case, a railroad company was not liable under Tennessee criminal law, because the criminal statute “had been superseded, by implication, by the Railroad & Public Utility Act[.]” *Id.* at 212 (*citing Cincinnati, N. O. & T. P. R. Co. v. State*, 148 Tenn. 127 (Tenn. 1922)).

Further, the Telecommunications Act of 1996 (“the Act”) requires that all ICAs be approved by a state regulatory commission before they become effective. State commissions, such as the TPUC, have authority to approve and disapprove interconnection agreements, such as the one at issue herein. 47 U.S.C. § 252(e)(1). That authority includes the authority to interpret and enforce the provisions of agreements that the state commissions have approved. *Southwestern Bell Telephone Co. v. Public Utility Comm'n of Texas*, 208 F.3d 475, 479 (5th Cir. 2000). The ICA at issue here was submitted to the TPUC on October 28, 2003 and approved on December 8, 2003. Thus this commission has the authority to interpret and enforce the provisions of the ICA.

C Spire has not pointed to any cases, in Tennessee or elsewhere, for the proposition that a Commission in one state has a legal obligation to defer to that of another state when the same or similar issues are pending in multiple states. Indeed, to the best of AT&T’s knowledge there are no such statutes or rulings. Rather, it is long settled law that the regulatory authority in each state has jurisdiction to decide issues that come before it, without regard to the fact that another state may be considering the same or similar issues. Each state regulatory agency stands on its own for jurisdiction issues that come before it.

Based on the foregoing, it is clear that jurisdiction clearly lies with TPUC to resolve the issues raised in the Complaint. Thus, C Spire’s Motion should be denied.

III. THE MATTER PENDING IN MISSISSIPPI DOES NOT REQUIRE THIS CASE TO BE DISMISSED OR STAYED.

In the Motion, C Spire contends that this matter should be dismissed and/or stayed because there is a similar matter pending before the Mississippi Public Services Commission. This argument is also without merit.

It is well settled that when an action is brought “in personam and seeks only a personal judgment, another action for the same cause in another jurisdiction is **not precluded.**” *Kline v. Burke Construction Company*, 260 U.S. 226, 230 (1922) (emphasis added). “In the application of the doctrine of ‘another action pending,’ each state is regarded as foreign to every other state; and hence, the pendency of an action in personam, or transitory action, in one state cannot, as a general rule, be pleaded in abatement of an action subsequently commenced in another state between the same parties for the same cause of action.” *Hubbs v. Nichols*, 298 S.W.2d 801, 803 (Tenn. 1956).

Thus, because these two actions are pending in different jurisdictions — one in Mississippi and one in Tennessee — the doctrine of “another action pending” is inapplicable and C Spire’s Motion should be denied on these grounds.

IV. THE AMOUNTS AT ISSUE IN TENNESSEE ARE GREATER THAN IN MISSISSIPPI.

If there were merit to C Spire’s argument that one case should be put on hold while the other proceeds – and there is not -- the matter should be stayed in Mississippi, not Tennessee. As noted in footnote 1, some 55% of the amounts at issue in the four states relate to use of Tennessee facilities. The Tennessee case should move forward, if for no other reason than the majority of the amounts at issue arise in Tennessee. There is no sound reason for Tennessee to wait on another state when the bulk of the dispute resides here.

Respectfully submitted, this 5th day of December, 2019

By:

A handwritten signature in blue ink, appearing to be "JDenton", is written over a horizontal line.

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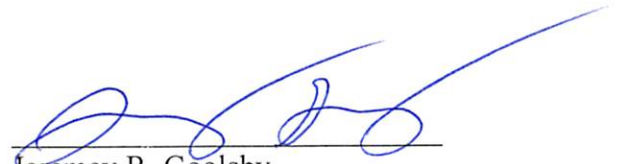
CERTIFICATE OF SERVICE

I, Jeremy R. Goolsby, attorney of record for BellSouth Telecommunications, LLC d/b/a AT&T Tennessee, hereby certify that I have this day caused to be filed and delivered by U.S. Mail and electronic mail, a copy of the above and foregoing document to:

ATTORNEYS FOR CELLULAR SOUTH, INC.

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This 5th day of December, 2019.



Jeremy R. Goolsby