

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF SOUTHEAST TELEPHONE, INC., )	
FOR ARBITRATION OF CERTAIN TERMS AND )	CASE NO.
CONDITIONS OF PROPOSED AGREEMENT )	2006-00316
WITH BELL SOUTH TELECOMMUNICATIONS, )	
INC. CONCERNING INTERCONNECTION )	
UNDER THE TELECOMMUNICATIONS ACT OF )	
1996 )	

O R D E R

On March 28, 2007, the Commission issued its arbitration decision ("March 28 Order") upon the merits of the issues raised in this proceeding. At the conclusion of that Order, the parties were instructed to submit an interconnection agreement to the Commission which encompassed terms reflecting the decision of the Commission as to each issue raised in the case.

On July 25, 2008, BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky") and SouthEast Telephone, Inc. ("SouthEast") filed their partial conforming interconnection agreement with the Commission. The parties have negotiated and reached agreement on contract language for all issues except two: Issue 14 and Issue 9. The parties have jointly asked the Commission to resolve these issues. Having reviewed the arguments of each party and in consideration of the law applicable to each issue, the Commission finds that, as to Issue 14, the parties should follow the contract language proposed by SouthEast and, as to Issue 9, the parties should follow the contract language proposed by AT&T Kentucky.

## ISSUE 14 – NETWORK ELEMENTS AND OTHER SERVICES

The first issue concerns commingling of network elements with one or more telecommunications services or facilities obtained at wholesale or commingling a network element or combination with one or more such wholesale telecommunications services or facilities including those services or facilities available pursuant to 47 U.S.C. § 271. As to Issue 14, the parties vigorously disagree on the scope of the language that should be used to address the commingling of network elements. For this reason, the parties have submitted the issue to the Commission for resolution.

The proposed contract language, as submitted by AT&T Kentucky and SouthEast, is presented as follows<sup>1</sup>:

### SouthEast's Proposed Language

1.2.2 Except upon request by SouthEast, AT&T shall not separate requested network elements **or services** that AT&T currently combines **or commingles**.

1.4.1.1 Upon request, AT&T shall provide to SouthEast **commingled unbundled network elements with one or more facilities or services that SouthEast obtains from AT&T, including network elements and wholesale services provided pursuant to the obligations set forth in Section 271 of the Act as well as tariffed and non-tariffed special access and private line services. Upon request from SouthEast, AT&T shall perform the functions necessary to commingle an unbundled network element or combination of elements with one or more facilities or services provided by AT&T.**

1.4.1.2 Commingling means the connecting, attaching, or otherwise linking of a Network Element, or a Combination, to one or more Telecommunications Services or facilities that SouthEast has obtained at wholesale from AT&T, or the combining of a Network Element or Combination with one or more such wholesale Telecommunications Services or facilities, including those services or facilities available

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<sup>1</sup> Words that are bold and underlined signify language proposed by AT&T Kentucky but objected to by SouthEast. Words simply marked in bold signify language proposed by SouthEast but objected to by AT&T Kentucky.

pursuant to Section 271 of the Act. SouthEast must comply with all rates, terms or conditions applicable to such wholesale Telecommunications Services or facilities.

**1.4.1.3 Upon request, AT&T shall provide to SouthEast one or more UNEs or UNE combinations commingled with any facility or service that SouthEast obtains at wholesale pursuant to any method other than unbundling under Sections 251(c)(3) or 252 of the Act, including local switching and other elements purchased pursuant to Section 271 of the Act.**

5.1.1. For purposes of this Section, references to "Currently Combined" network elements shall mean that such network elements are in fact already combined by AT&T in the AT&T network. References to "Ordinarily Combined" Network Elements shall mean that the particular Network Elements requested by SouthEast are not already combined by AT&T in the location requested by SouthEast but are elements that are typically combined in AT&T's network. References to "Not Typically Combined" Network Elements shall mean that the particular Network Elements requested by SouthEast are not elements that AT&T combines for its use in its network. **For purposes of this section, the terms "combine," "combined," and "combination" shall include commingling, and "combinations" of network elements shall include network elements that are "commingled" with other tariffed or nontariffed services, facilities, or network elements.**

#### AT&T Kentucky's proposed language

1.2.2 Except upon request by SouthEast, AT&T shall not separate requested network elements that AT&T currently combines.

1.4.1.1 Commingling means the connecting, attaching, or otherwise linking of a Network Element, or a Combination, to one or more Telecommunications Services or facilities that SouthEast has obtained at wholesale from AT&T, or the combining of a Network Element or Combination with one or more such wholesale Telecommunications Services or facilities, including those services or facilities available pursuant to Section 271 of the Act. SouthEast must comply with all rates, terms or conditions applicable to such wholesale Telecommunications Services or facilities.

**1.4.1.3 Upon request, AT&T shall perform the functions necessary to commingle a Network Element or a Combination with one or more facilities or services that SouthEast has obtained at wholesale from AT&T pursuant to a method other than unbundling under Section**

251(c)(3) of the Act including elements purchased pursuant to Section 271 of the Act (e.g., Local switching).

1.4.1.4 Where SouthEast requests a Commingling arrangement for which ordering and provisioning processes are not already available, AT&T will develop and implement processes, rates, terms and conditions via the Bona Fide Request Process described in Section 6 of the General Terms and Conditions of this Agreement. The Parties will comply with any applicable Change Control Process guidelines.

5.1.1. For purposes of this Section, references to "Currently Combined" network elements shall mean that such network elements are in fact already combined by AT&T in the AT&T network. References to "Ordinarily Combined" Network Elements shall mean that the particular Network Elements requested by SouthEast are not already combined by AT&T in the location requested by SouthEast but are elements that are typically combined in AT&T's network. References to "Not Typically Combined" Network Elements shall mean that the particular Network Elements requested by SouthEast are not elements that AT&T combines for its use in its network.

AT&T Kentucky's position is that the language proposed by SouthEast was not ordered by the Commission or raised as an arbitration issue. AT&T Kentucky relies on 47 U.S.C. § 252(4), which limits the Commission to the consideration of items that were raised within the petition or responses thereto. AT&T Kentucky further explains that the language contained in Section 1.2.2 is taken directly from 47 C.F.R. § 51.315(b) and does not expand the requirement. SouthEast's position is that the language proposed by AT&T Kentucky is limiting and that the Commission did require AT&T Kentucky to commingle unbundled network elements ("UNEs") with any element that competitive carriers receive at wholesale. AT&T Kentucky opposes Sections 1.4.1.1 and 1.4.1.3 as presented by SouthEast and argues that this proposed language expands the language previously agreed to by the parties, which AT&T Kentucky believes is sufficient for the issue.

The Commission notes that the UNE commingling issue has been the subject of at least two cases before this agency.<sup>2</sup> Since the final Order in Case No. 2008-00279 has not been issued as of the date of this Order, the Commission shall rely upon its findings in Case No. 2004-00427, wherein it held that AT&T Kentucky is obligated to make facilities or services under 47 U.S.C. § 271 available to competitors on a commingled basis with UNEs under 47 U.S.C. § 251.<sup>3</sup>

In Case No. 2004-00427, the Commission did not place any limitation on commingling and finds that no argument has been made in this proceeding to persuade the Commission to change its decision on this very specific issue. Consistent with its decisions in Case No. 2004-00427, the Commission finds that the parties should adopt SouthEast's proposed language for Issue 14 wherein SouthEast would be allowed to expand commingling to any combination of elements.

#### ISSUE 9 – REMOTE SITE PHYSICAL COLLOCATION

The second issue on which the parties have not reached agreement as to conforming language is arbitration Issue 9, which concerns remote site physical collocation. Specifically, the question presented was whether AT&T Kentucky must provide data on the location and type of certain network facilities, the number of customer lines and geographic service areas of such facilities and, if such information is presented, what rate should be charged for the provision of that information. In the

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<sup>2</sup> The two cases are Case No. 2004-00427, Petition of BellSouth Telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law (hereinafter "Case No. 2004-00427"), and Case No. 2008-00279, SouthEast Telephone, Inc. v. BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (hereinafter "Case No. 2008-00279").

<sup>3</sup> See Case No. 2004-00427, December 12, 2007 Order at 13-16.

March 28 Order, as to Issue 9, the Commission held that under 47 U.S.C. § 251 and several Federal Communications Commission (“FCC”) rules, AT&T Kentucky is obligated to make available the type of information requested by SouthEast.<sup>4</sup> The Commission held that, although it appeared that AT&T Kentucky had attempted to supply the type of information sought by SouthEast, it may not have done so to the fullest extent required under the 1996 Telecommunications Act and FCC rules.<sup>5</sup> Specifically, the Commission required AT&T Kentucky to provide information that “identifies the location of RTs, including mapped resources or geographic coordinates. . . . Furthermore, any information supplied to SouthEast should, upon request, be made available for all of the RTs within a specified wire center or other serving area to the extent acceptable to both parties.”<sup>6</sup>

The parties have each submitted potential language to be used in their interconnection agreement to address the question of the scope of information to be provided by AT&T Kentucky to SouthEast to facilitate remote site physical collocation requests. The proposed contract language, as submitted by AT&T Kentucky and SouthEast, is as follows<sup>7</sup>:

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<sup>4</sup> March 28 Order at 14-15.

<sup>5</sup> Id. at 15.

<sup>6</sup> Id.

<sup>7</sup> Words that are bold and underlined signify language proposed by AT&T Kentucky, but objected to by SouthEast. Words simply marked in bold signify language proposed by SouthEast, but objected to by AT&T Kentucky.

AT&T Kentucky's Proposed Language<sup>8</sup>

2.3.3 Remote Terminal Information. Upon request from SouthEast, BellSouth will continue to provide SouthEast with access to the AT&T's Application Collocation Tool. The data request portion of this tool will support a data request for all **Remote Terminal** subscribers information including, but not limited to, (i) Remote Terminal subscribers. The information provided in the data request will include the Remote Site CLLI code, Remote Site Address; the MSAG valid Subscriber Address and Subscriber Phone Number (ii) the carrier serving area of the remote terminal; (iii) the designation of which remote terminals subtend a particular central office. The wire distribution count will be provided via the redacted Maps. For the items listed in this Section 2.3.3 (excluding the redacted Maps), AT&T will bill the nonrecurring charge pursuant to the rates in Exhibit A at the time AT&T sends the CD.

2.3.3.1 Additional Information to be Made Available on a NonDiscriminatory Basis **via Wire Center RT Overview Map and Individual RT Plat Maps**. Upon request, AT&T shall also provide SouthEast the same information that it provides to its own technicians, engineers, network planners, or any other personnel within the company for the purpose of locating, maintaining, and repairing AT&T's network infrastructure, limited to: (i) locations and CLLI Codes for all Remote Terminal carrier systems in the requested wire center; (ii) **the Remote Terminal pole location**; (iii) **street and cross streets (names are labeled)**; (iv) **the plat boundary**; (v) **the wire center boundary (if plat is adjacent to another wire center)**; (vi) cross-box locations **via the LMU (Loop Make-up) Tool**. AT&T shall also provide **map ordering capabilities for this information on a wire center RT overview map and individual RT plat MAPS with RT locations** basis. If AT&T makes any changes to plant and network components for any wire center for which infrastructure information has previously been requested by SouthEast, AT&T shall **upon request** promptly provide updated information to SouthEast **at the rates provided in the Pricing schedule. Additionally, these maps will not contain any other AT&T proprietary information and will be provided pursuant to a nondisclosure agreement between the parties.**

2.3.3.2 AT&T will (i) provide the information described 2.3.3.1 on a CD in PDF File format; and (ii) the information will be provided for each serving wire center designated by SouthEast, up to a maximum of thirty (30) wire centers per SouthEast request per month for the state of Kentucky only. AT&T will provide the information required in Section 2.3.3.1 within thirty (30) days of a SouthEast request. **The Parties agree to negotiate and**

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<sup>8</sup> "RT" refers to remote terminal.

**file an amendment to this Agreement containing negotiated rates for the redacted MAPS referenced above within six months of the Effective Date.**

SouthEast's Language

2.3.3 Remote Terminal Information. Upon request from SouthEast, BellSouth will continue to provide SouthEast with access to the AT&T's Application Collocation Tool. The data request portion of this tool will support a data request for all **wire center** subscribers information including, but not limited to, (i) Remote Terminal subscribers; (ii) **Central office served subscribers; and (iii) all other subscribers served by the requested wire center.** The information provided in the data request will include the Remote Site CLLI code **or Central office designation;** Remote Site Address; the MSAG valid Subscriber Address and Subscriber Phone Number **(iv) the carrier serving area of the remote terminal; (v) the designation of which remote terminals subtend a particular central office.** The wire distribution count will be provided via the redacted Maps. For the items listed in this Section 2.3.3 (excluding the redacted Maps), AT&T will bill the nonrecurring charge pursuant to the rates in Exhibit A at the time AT&T sends the CD.

2.3.3.1 Additional Information to be Made Available on a NonDiscriminatory Basis. Upon request, AT&T shall also provide SouthEast the same information that it provides to its own technicians, engineers, network planners, or any other personnel within the company for the purpose of locating, maintaining, and repairing AT&T's network infrastructure, **including but not limited to:** (i) locations and CLLI Codes for all Remote Terminal carrier systems in the requested wire center; (ii) **all pole locations and routes with each pole number clearly identified on the map in the requested wire center; (iii) pedestal locations and numbers; (vi) (iv) cross-box locations with the associated wire distribution count and the name, number and size of each; (v) copper route and splice locations; and (vi) fiber optic route and splice locations.** AT&T shall also provide ordering capabilities for this information on a wire center basis. If AT&T makes any changes to plant and network components for any wire center for which infrastructure information has previously been requested by SouthEast, AT&T shall promptly provide updated information to SouthEast.

2.3.3.2 AT&T will (i) provide the information described 2.3.3.1 on a CD in PDF File format; and (ii) the information will be provided for each serving wire center designated by SouthEast, up to a maximum of thirty (30) wire centers per SouthEast request per month for the state of Kentucky only. **AT&T will bill the nonrecurring charge for this service pursuant to**

**TELRIC pricing and on nondiscriminatory terms and conditions.**

AT&T will provide the information required in Section 2.3.3.1 within thirty (30) days of a SouthEast request.

Having reviewed each carrier's proposed language, the Commission finds that AT&T Kentucky's proposed language is sufficient and reasonable and satisfies the Commission's intent as expressed in the March 28 Order, while SouthEast's proposed language is broader in scope than intended by the Commission and is, therefore, rejected. Unlike the commingling language for Issue 14, the question of the proper language to define the data to be made available to facilitate remote site physical collocation has not been previously addressed by this Commission. In Issue 14, the Commission has the benefit of relying upon its previous decisions in order to render a final decision; however, in Issue 9, the Commission must review the proposed language with a fresh perspective buttressed by the scope of its findings in the March 28 Order in this same proceeding.

The Commission also finds that the specific collocation data requests made by SouthEast are far more expansive than was originally requested within SouthEast's arbitration petition instituting this proceeding.<sup>9</sup> Specifically, in the proposed language, SouthEast requests that AT&T Kentucky provide information on "[c]entral office served subscribers; and (iii) all other subscribers served by the requested wire center" and "[c]entral office designation". As the information requested in the proposed language does not follow the information request originally outlined in SouthEast's

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<sup>9</sup> See Petition at 16-18, as filed on June 22, 2006.

petition, the Commission finds, pursuant to 47 U.S.C. § 252(4),<sup>10</sup> that SouthEast's language proposal for Section 2.3.3 of the interconnection agreement must be rejected. The Commission accepts AT&T Kentucky's proposed language providing for non-discriminatory access and reasonable terms to sufficiently allow SouthEast to collocate and expand its communications facilities. The remote terminal information qualifies as sufficient location information for SouthEast as it seeks to progress in a build-out of its network.

As to the language for Section 2.3.3.1, the Commission also finds that AT&T Kentucky's proposed language complies with the Commission's intent as outlined in the March 28 Order. As with Section 2.3.3, the Commission finds that SouthEast's data requests are too expansive and are broader than originally intended by the Commission. By stating within its proposed language that AT&T Kentucky will provide access to RT pole locations, street locations and names, plat and wire center boundaries<sup>11</sup> and access to the Loop Make-Up Tool, in addition to access to RT overview maps and plat MAPS, which include RT locations,<sup>12</sup> the Commission finds that

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<sup>10</sup> 47 U.S.C. § 252(4) provides, in part:

The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

<sup>11</sup> AT&T Kentucky states that competitive LECs, such as SouthEast, have access to AT&T Kentucky's Loop Make-Up Tool through an operating support system which contains the same details of particular loop qualification information used by AT&T Kentucky. See Joint Master List of Issues at 7-9, as filed on July 28, 2008.

<sup>12</sup> See January 9, 2007 Hearing Transcript of Evidence at 48, 61-62, and 170-171 for discussion of non-disclosure information for RT pole locations. See Prefiled Direct Testimony of Pamela Tipton at 10-11 (as filed on November 3, 2006) and Prefiled Rebuttal Testimony of Pamela Tipton at 29, 30 (as filed on December 16, 2006).

these data and data sources are sufficient and would be provided in a nondiscriminatory manner to SouthEast in satisfaction of the competitive requirements under 47 U.S.C. § 251(c) and applicable FCC rules.<sup>13</sup>

As to the pricing to be applied to provision of the data under Section 2.3.3.2, the Commission finds that maps or reports are not subject to total element long run incremental cost pricing under 47 U.S.C. § 252, as suggested by SouthEast. AT&T Kentucky's proposal that the parties should negotiate such pricing is reasonable, sufficient and nondiscriminatory, and its proposed language is acceptable to the Commission and should be included in the parties' conforming agreement.

IT IS HEREBY ORDERED that:

1. As to Issue 14, the language proposed by SouthEast shall be used by the parties and included in the interconnection agreement that is the subject of this arbitration proceeding.
2. As to Issue 9, the language proposed by AT&T Kentucky shall be used by the parties and included in the interconnection agreement that is the subject of this arbitration proceeding.
3. AT&T Kentucky and SouthEast shall file their interconnection agreement (or amendments), with sections conforming to the Commission's findings as contained herein, within 30 days from the date of this Order.

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<sup>13</sup> See 47 C.F.R. §§ 51.313, 51.319, 51.5.

Done at Frankfort, Kentucky, this 20th day of January, 2009.

By the Commission

ATTEST:

  
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