

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 April 20, 2007, BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky") moved the Commission to reconsider two issues contained in the March 28, 2007 Order. AT&T Kentucky asserts that the Commission should reconsider Issue A-3, regarding the monthly recurring rate applicable to the port switching element mandated pursuant to 47 U.S.C. § 271, and Issue A-4, regarding terms and conditions governing a specific interconnection arrangement. On May 2, 2007, SouthEast Telephone, Inc. ("SouthEast") filed its response in opposition to AT&T Kentucky's request.

The Commission has considered the motion and response thereto, as well as the accompanying affidavits.

ISSUE A-3: WHAT MONTHLY RECURRING RATE
SHOULD APPLY TO THE "PORT" COMPONENT
OF THE PLATFORM COMBINATION?

AT&T Kentucky asks this Commission to hold its Order in abeyance pending the issuance of an opinion by the U.S. District Court for the Eastern District of Kentucky in a case involving the same parties.¹ In the alternative, AT&T Kentucky asks this Commission to grant rehearing to permit it to provide evidence demonstrating the market rate for the switching element required to be provided under 47 U.S.C. § 271. AT&T Kentucky contends that the Commission has no pricing jurisdiction over any elements provided under 47 U.S.C. § 271, but argues, in the alternative, that rates contained in agreements not on file with the Commission should be viewed as market rates established through arm's-length negotiations. In its motion for reconsideration, AT&T Kentucky has, for the first time, presented any evidence regarding an appropriate rate for the port component of the loop, switching, and transport elements that, by law, it must provide.

Whether this Commission has pricing authority over in-state facilities and functionalities provided pursuant to 47 U.S.C. § 271 is the subject of pending federal litigation. It is also the subject of this petition for rehearing as to Issue A-3. The Commission finds that rehearing of this issue should be granted for the purpose of placing this matter in abeyance pending a ruling by the United States District Court for the Eastern District of Kentucky.

¹ BellSouth Telecommunications, Inc. v. Kentucky Public Service Commission and SouthEast Telephone, Inc., 06-cv-65-KKC.

ISSUE A-4: WHAT RATES, TERMS, AND CONDITIONS
SHOULD GOVERN AN INTERCONNECTION ARRANGEMENT
IN WHICH BELL SOUTH'S OFFERING OF UNE-L
INTERCONNECTED TO SOUTHEAST'S NETWORK
AT AN "ADJACENT MEET POINT"?

AT&T Kentucky has sought rehearing of this issue to allow the Commission to consider a November 20, 2000 case from the Western District of Washington.² AT&T Kentucky argues that the Commission incorrectly required physical collocation of equipment beyond the premises of AT&T Kentucky's network in violation of 47 U.S.C. § 251(c)(6). However, as the Commission's March 28, 2007 Order specifies, the Commission addressed SouthEast's proposal regarding a specific interconnection arrangement. The Commission did not limit its discussion to collocation but, instead, described how the Telecommunications Act requires all incumbent local exchange carriers ("ILECs") to permit interconnection with the ILEC's network at any technically feasible point on rates, terms, and conditions that are just, reasonable, and non-discriminatory.³ Moreover, the Commission noted that, according to Federal Communications Commission ("FCC") rules, technically feasible methods of obtaining interconnection or access to unbundled network elements ("UNEs") include, but are not limited to, physical collocation and meet-point interconnection arrangements.⁴

² US West Communications, Inc. v. American Telephone Technology, Inc., 2000 U.S. Dist. LEXIS 19046.

³ March 28, 2007 Order at 8-9, quoting 47 U.S.C. § 251(c)(3).

⁴ 47 C.F.R. § 51.321(b).

Moreover, the FCC rules indicate that an ILEC shall provide other methods of interconnection and access to UNEs to the extent technically feasible.⁵

The Commission found that SouthEast's proposal to interconnect its facilities with those of AT&T Kentucky for the purpose of accessing UNEs was an appropriate interconnection arrangement. Pursuant to KRS 278.400, "any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing." AT&T Kentucky has presented no arguments not previously considered by the Commission and, as such, rehearing is denied.

IT IS HEREBY ORDERED that:

1. AT&T Kentucky's motion for reconsideration regarding Issue A-3 is granted and the matter held in abeyance as described herein.

2. AT&T Kentucky's request for rehearing of Issue A-4 is denied.

Done at Frankfort, Kentucky, this 10th day of May, 2007.

By the Commission

ATTEST:


Executive Director

⁵ 47 C.F.R. § 51.321(e).