

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BELLSOUTH TELECOMMUNICATIONS, INC.'S)
NOTICE OF INTENT TO DISCONNECT) CASE NO.
SOUTHEAST TELEPHONE, INC. FOR NON-) 2005-00519
PAYMENT)

AND

SOUTHEAST TELEPHONE, INC.)
)
COMPLAINANT)
) CASE NO.
V.) 2005-00533
)
BELLSOUTH TELECOMMUNICATIONS, INC.)
)
DEFENDANT)

O R D E R

This matter is now before the Commission upon remand from the United States District Court for the Eastern District of Kentucky, pursuant to the Court's May 1, 2009 Opinion and Order directing the Commission to calculate specifically the amount owed to BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky") by SouthEast Telephone, Inc. ("SouthEast")¹. In the May 1 Opinion, the Court directed the Commission to calculate the total amount due to AT&T Kentucky "based on the resale rate contained in the interconnection agreement, minus the amounts actually

¹ Opinion and Order, BellSouth Telecommunications, Inc. v. Kentucky Public Service Commission, et al., Civil Action No. 08-33-DCR, slip copy, United States District Court, Eastern District of Kentucky (May 1, 2009) ("May 1 Opinion").

paid by SouthEast, along with any applicable late charges, penalties, and interest as specified under the interconnection agreement.”² The Court instructed the Commission to complete the calculations, issue a determination, and file a copy of its decision with the Court within 60 days of the date of entry of the May 1 Opinion.³

On May 5, 2009, the Commission held an informal conference with the parties to outline a procedural schedule for the submission of proposed figures and comments to be considered by the Commission for its Final Order determining the amount of damages due to AT&T Kentucky. At the informal conference, the parties agreed that the resale calculations and figures provided by AT&T Kentucky in this proceeding on November 9, 2007 (“November 2007 calculations”) could be used as a starting point for developing calculations of the final amount of money owed by SouthEast.

On May 12, 2009, SouthEast submitted written comments on the amount that AT&T Kentucky submitted in the November 2007 calculations outlining the damages due based on the resale rate in the interconnection agreement, minus amounts previously paid, plus late fees, penalties, and interest. SouthEast stated that it did not dispute the accuracy of the principal amount in the November 2007 calculations; however, it was conducting an ongoing review of the computation of penalties and interest. On May 19, 2009, SouthEast submitted a statement indicating that it had no dispute with the interest and penalty totals submitted by AT&T Kentucky in the November 2007 calculations and that those calculations accurately reflected the computations prescribed by the parties’ interconnection agreement.

² Id. at 7.

³ Id. at 8.

On May 27, 2009, AT&T Kentucky and SouthEast submitted a Joint Filing of Agreed Damages Calculations ("Joint Filing"). In the Joint Filing, the parties stated that they had reached an agreement as to the exact amount of damages due from SouthEast to AT&T Kentucky. This figure includes the current amount of damages and late payment and interest charges. The final calculation agreed upon by the parties is provided in the Appendix to this Order. In the Joint Filing, SouthEast stated that it waived its right to any hearing on the issue of the calculation of damages and late payment and interest charges.

This matter is now ripe for decision. After careful review of the pleadings, including the Joint Filing, an examination of the record and being otherwise sufficiently advised, the Commission finds that the final damages calculation, as provided within the Joint Filing and agreed upon by the parties, should be accepted and adopted in resolution of this administrative proceeding. Therefore, the Commission finds that SouthEast owes to AT&T Kentucky the amount of money provided in the Joint Filing as set forth in the Appendix to this Order as the final calculation of damages based on the resale rate contained in the interconnection agreement, minus the amount actually paid by SouthEast, along with any applicable late charges, penalties, and interest as specified under the interconnection agreement.

On April 30, 2008, May 22, 2009, and June 9, 2009, the Commission granted confidentiality to certain filings by AT&T Kentucky in this proceeding. Those filings contained the financial details used by the parties to develop the final calculation provided in this Order. In granting confidentiality to those filings, the Commission found that public disclosure of that financial information could create competitive injury to the

parties to the interconnection agreement from which those particular financial details are derived,⁴ as the information in question is not known to others outside of AT&T Kentucky, SouthEast, and the Commission.⁵ The filings also contained billing information and data for SouthEast which is unique and personal to the company and is not disclosed in the normal course of business. As the Commission has previously established that those financial figures should be given confidential treatment, and as those same calculations serve as the basis for the Commission's final calculation of damages presented within this Order, the Commission finds that the final calculation, as agreed to by AT&T Kentucky and SouthEast within the Joint Filing and as adopted by the Commission, shall be given confidential treatment and placed into the public record for this proceeding only in redacted form.

IT IS THEREFORE ORDERED that:

1. The final damages calculation, as agreed to by the parties in the Joint Filing, is adopted and approved by the Commission as provided within this Order.
2. The Commission finds that the calculation provided in the Appendix to this Order is the amount SouthEast owes to AT&T Kentucky as the final calculation of damages based on the resale rate contained in the interconnection agreement, minus

⁴ See KRS 61.870 *et seq.*

⁵ On June 11, 2009, the Commission, AT&T Kentucky and SouthEast filed with the U.S. District Court for the Eastern District of Kentucky a Joint Motion for Leave to File Under Seal the Commission's Decision on the calculation of damages. That same day, the Court issued an Order granting the motion to file under seal the filing to be made by the Commission on June 30, 2009 in compliance with the requirements outlined in the Court's May 1, 2009 Opinion and Order. BellSouth Telecommunications, Inc. v. Kentucky Public Service Commission, et al., *supra*, Docket Entry 43 (E.D. Ky., June 11, 2009, Order granting Motion to File Under Seal).

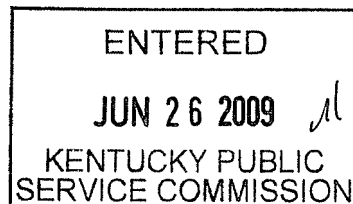
the amount actually paid by SouthEast, along with any applicable late charges, penalties, and interest as specified under the interconnection agreement.

3. The final damages calculation, as set forth within the Appendix to this Order, shall be granted confidential protection.

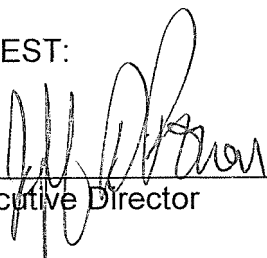
4. Commission Staff shall file a copy of this Order with the United States District Court with the Appendix to this Order kept under seal in accordance with the Court's June 11, 2009 Order.

5. This proceeding is hereby closed and shall be removed from the Commission's docket.

By the Commission



ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN
CASE NOS. 2005-00519 AND 2005-00533
DATED JUN 26 2009

**By Order of the Commission, the information contained within this
Appendix is confidential, pursuant to 807 KAR 5:001, Section 7.**

Final Calculation of damages owed
by SouthEast to AT&T Kentucky

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Honorable Jonathon N Amlung
Attorney at Law
AMLUNG Law Offices
616 South 5th Street
Louisville, KY 40202

Honorable Bethany L Bowersock
Attorney at Law
PO Box 1001
Pikeville, KY 41502

Ms. Joan A Coleman
Vice President/Regulatory/External
BellSouth Telecommunications, Inc. dba AT&T
601 West Chestnut Street, Room 408
Louisville, KY 40203

Honorable Deborah T Eversole
Attorney at Law
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W Jefferson Street
Louisville, KY 40202-2828

Honorable Mary K Keyer
General Counsel/Kentucky
BellSouth Telecommunications, Inc. dba AT&T
601 West Chestnut Street, Room 408
Louisville, KY 40203

Honorable David L Sieradzki
Attorney at Law
Hogan & Hartson, L.L.P.
555 Thirteenth Street, N.W.
Washington, DC 20004-1109