

line conversions.¹ For this reason, SouthEast states that the additional issues concerning installation and conversion charges, the requests for commingling at remote terminals and the qualifiers placed by AT&T Kentucky on orders for copper loops should be incorporated into this proceeding.

The original nature of SouthEast's complaint concerned its inability to have AT&T Kentucky attach commingled elements at SouthEast's request. SouthEast has specifically framed its complaint centered upon its ability to order a non-designed, unbundled copper loop commingled with a standalone port.² In the February 26, 2009 Order, the Commission defined the issues that were to be addressed and considered in the formal hearing in this proceeding. Specifically, the Commission held that a "formal evidentiary hearing will be necessary to decide if AT&T Kentucky acted unreasonably in waiting until December 1, 2008 to facilitate commingling orders by SouthEast and the pricing credits that are due to SouthEast, if at all."³ As stated in that Order, the parties had stated to the Commission that they had reached an interim resolution on the ability of SouthEast to receive the products ordered from AT&T Kentucky.⁴ In filing the complaint, SouthEast had stated that AT&T Kentucky had failed to comply with the

¹ SouthEast's Reply in Support of Motion to Incorporate at 3. Filed April 6, 2009.

² SouthEast's Response to BellSouth Telecommunications, Inc. Answer at 4. Filed August 13, 2008.

³ February 26, 2009 Order at 1.

⁴ Id. at 2.

Commission's previous Order⁵ in a related proceeding which required AT&T Kentucky to allow competitors to order commingled elements. Commingling elements allows for the connecting, attaching, or otherwise linking of an unbundled network element ("UNE"), or a UNE combination, including local switching, to one or more facilities or services that a requesting carrier, such as SouthEast, has obtained at wholesale from an incumbent LEC, such as AT&T Kentucky, pursuant to any other method except unbundling under 47 U.S.C. § 251(c)(3).⁶ The Commission previously held that AT&T Kentucky must make these 47 U.S.C. § 271 elements available to competitors on a commingled basis with 47 U.S.C. § 251 UNEs.⁷ Southeast states that AT&T Kentucky should have begun the facilitation of such orders for commingling arrangements by July 1, 2008, as SouthEast has specifically been submitting commingled orders since June 16, 2008.⁸ On December 1, 2008, AT&T Kentucky allowed SouthEast to obtain commingled elements for future orders placed on and after that date.⁹ SouthEast alleges that it is owed credits for existing lines that were not converted between July 1, 2008 and December 1, 2008. AT&T Kentucky denies that SouthEast is owed any credit as AT&T Kentucky acted expeditiously to develop a process to facilitate the

⁵ Case No. 2004-00427, *In the Matter of Petition of BellSouth Telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law* (Ky. PSC Dec. 5, 2007) ("Change of Law Order").

⁶ *Id.* at 12.

⁷ *Id.*

⁸ *See* Letter from Bethany Bowerstock, counsel for SouthEast, to Mary Keyer, counsel for AT&T Kentucky, filed November 14, 2008, and SouthEast's Response, *supra*, at 4.

⁹ *Id.*

commingling request once it determined the exact nature of SouthEast's requests. AT&T Kentucky states that it developed a process that would give SouthEast the "financial equivalent of having the commingled arrangement provisioned."¹⁰ AT&T Kentucky states that the process was developed within a reasonable time and SouthEast would not be entitled to any retroactive credits.¹¹

DISCUSSION

A. Issue 1 - Installation Charges versus Conversion Charges

SouthEast requests the incorporation of the issue concerning AT&T Kentucky's attempt to charge a new installation fee for pre-existing lines that SouthEast seeks to have converted to the commingled elements previously ordered. SouthEast alleges that AT&T Kentucky seeks to impart an installation fee of \$79.92 on every converted line.¹² In response to the motion, AT&T Kentucky states that the installation and conversion charges are points of contention that have already been placed into the proceeding and, therefore, no additional incorporation is necessary.¹³ Having reviewed the issue, the Commission deems SouthEast's proposed Issue 1 to directly concern the billing issues related to commingling orders. The Commission considers the charges for the conversion of lines compared to the charges for the installation of lines for certain services which are provided through the use of commingled elements to be integral to the issue of proper billing. The Commission finds that the parties should have the

¹⁰ AT&T Kentucky's Responses to the Commission Staff's Data Request dated March 20, 2009, Item No. 2, page 1 of 2. Filed April 3, 2009.

¹¹ Id.

¹² Motion to Incorporate, *supra*, at 2.

¹³ Response of AT&T Kentucky to SouthEast Telephone's Motion to Incorporate Additional Compliance Issues at 4. Filed March 27, 2009.

opportunity to address the question of whether AT&T Kentucky was correctly charging SouthEast for the service implemented with an existing customer's access line when that line was to be converted to the commingled elements requested by SouthEast. This issue goes directly to the question of billing credits that may or may not be owed to SouthEast for the commingled element orders. It is relevant and necessary to the Commission's review of the complaint. Therefore, Issue 1 shall be incorporated into this proceeding.

B. Issue 2 – Remote Terminal Commingling

For the second issue, SouthEast alleges that, on four separate occasions, AT&T Kentucky rejected SouthEast's orders to attach commingled elements at remote terminals instead of a central office. SouthEast argues that the legal issues which apply to commingling at remote terminals do not differ from the legal issues which apply to commingling at central offices. SouthEast, on May 29, 2009, withdrew this portion of its Motion to Incorporate. Accordingly, Issue 2 will not be incorporated.

C. Issue 3 – Qualifiers and Limitations on Commingling Orders

As to Issue 3, SouthEast alleges that AT&T Kentucky has placed additional qualifications on SouthEast's ability to order a port commingled with a copper loop, non-designed. Specifically, SouthEast states that AT&T Kentucky has refused to allow orders concerning lines that are served through a "pair gain" or have "load coils". SouthEast states that, under the parties' interconnection agreement, AT&T Kentucky is obligated to remove load coils on copper loops and sub-loops of any length. Additionally, if a non-designed copper loop is available, SouthEast states that it is entitled to request AT&T Kentucky to change SouthEast's customer to the copper loop,

non-design, for which SouthEast will pay an installation fee of \$79.92.¹⁴ SouthEast alleges that AT&T Kentucky has stated that the presence of load coils on copper loops shorter than 18,000 feet “disqualifies” that loop from being converted to the commingled elements.¹⁵ As to the pair gain loop modification, SouthEast states AT&T Kentucky has denied a portion of its commingling orders, alleging there are not any non-designed copper loops available from the central office to the customer’s premises because AT&T Kentucky may currently serve that customer with a multiplexed loop using pair gain equipment to a node combined with a copper “last mile” loop to the customer’s premises.¹⁶ SouthEast claims that, although the customer is currently served through a pair gain multiplexed system, it does not automatically mean that there is not a non-designed copper loop available.¹⁷ In response to Issue 3, AT&T Kentucky states that the parties are currently in discussions over the qualifiers questions and that it should not be incorporated into this proceeding.

The Commission finds that the question of qualifiers for orders of commingled elements is extraneous to the larger concern about whether the amount of time AT&T Kentucky allowed to pass before facilitating commingled element orders was reasonable. “Pair gain” and “load coil” based lines do not add to the ultimate issue of commingling and the amount of time to be found as “reasonable” for the facilitation of orders in light of this Commission’s requirement that AT&T Kentucky is obligated to allow competitors to submit and receive those element requests. “Pair gain” and “load

¹⁴ Id.

¹⁵ SouthEast Motion to Incorporate at 4.

¹⁶ SouthEast Motion to Incorporate at 4.

¹⁷ Id.

coils” fall under the larger concepts of line conditioning and line sharing. The complaint, as presented by SouthEast, did not entail questions about AT&T Kentucky’s performance in maintaining the portions of the loops leased by SouthEast or the modification of the lines contained therein. The Commission is not convinced that integrating this issue into the proceeding would be helpful toward resolving the ultimate question of reasonableness of the time taken by AT&T Kentucky to develop a commingled element ordering process.¹⁸ The Commission shall deny the motion to the extent that SouthEast requests incorporation of Issue 3 into this proceeding.

D. Amended Procedural Schedule

In light of the Commission’s determination as to the additional issue to be included in this proceeding, the Commission shall amend the procedural schedule to allow for additional data requests and responses prior to the submission of testimony. This schedule is deliberately expedited in order to allow for a complete exchange of information between the parties prior to the July 14 formal hearing. No modification to this schedule shall be made except by further Order of the Commission.

IT IS HEREBY ORDERED that:

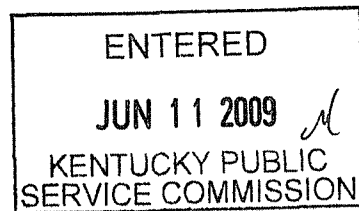
1. SouthEast’s motion to incorporate additional compliance issues is granted in part and denied in part.
2. Issue 1 relating to the billing of installation charges over conversion charges shall be incorporated into this proceeding.

¹⁸ See generally Louisville/Jefferson County Metro Government v. TDC Group, LLC, *supra*.

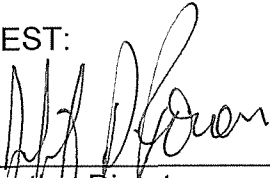
3. Issue 3 regarding the imposition of ordering qualifiers shall not be incorporated into this proceeding.

4. The procedural schedule is amended as provided in the Appendix to allow for the additional exchange of data requests and responses and extending the time for the submission of prefiled testimony.

By the Commission



ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2008-00279 DATED JUN 11 2009

SECOND AMENDED PROCEDURAL SCHEDULE

Second requests for information shall be exchanged
between the parties and filed with the Commission
no later than..... 06/12/09

Responses to second requests for information
shall be exchanged between the parties
and filed with the Commission
no later than.....06/19/09

Prefiled direct testimony, if any, in verified prepared
form, shall be filed no later than.....06/29/09

Prefiled rebuttal testimony, if any, in verified prepared
form, shall be filed no later than.....07/10/09

Public hearing is to begin at 10:00 a.m. in Hearing Room 1
of the Commission's offices at 211 Sower Boulevard, Frankfort,
Kentucky, for the purpose of cross-examination
of witnesses07/14/09

Briefs, if any, shall be filed by.....08/12/09

Honorable Douglas F Brent
Attorney at Law
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W Jefferson Street
Louisville, KY 40202-2828

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

Mary Pat Regan
President
BellSouth Telecommunications, Inc. dba AT&T
601 West Chestnut Street, Room 408
Louisville, KY 40203