COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADOPTION OF INTERCONNECTION AGREEMENT PROVISION BETWEEN BELLSOUTH TELECOMMUNICATIONS, INC., AND CINERGY COMMUNICATIONS COMPANY BY SOUTHEAST TELEPHONE, INC.	))))))	**CASE NO. 2004-00235**

SOUTHEAST TELEPHONE, INC.'S RESPONSE TO BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION FOR REHEARING

Comes now SouthEast Telephone, Inc. ("SouthEast"), by and through counsel, and hereby objects to the Motion for Rehearing filed by BellSouth Telecommunications, Inc. ("BellSouth").

PROCEDURAL BACKGROUND

As BellSouth aptly summarizes in its Motion for Rehearing, this matter has limited procedural background. On June 8, 2004, SouthEast notified BellSouth and this Commission that it was adopting a dispute-resolution provision contained in the interconnection agreement between BellSouth and Cinergy. SouthEast adopted this provision pursuant to the language of 47 U.S.C. §252(i), which provides that "[a] local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." BellSouth filed an objection to SouthEast's adoption notice. The Commission Staff issued data requests to both parties on August 10, 2004. After responses were filed, the Commission issued its September 29, 2004, Order granting the

adoption as noticed by SouthEast. BellSouth then filed a Motion for Rehearing on October 18, 2004.

ARGUMENT

I. THIS COMMISSION REACHED THE CORRECT DECISION IN APPLYING THE FCC RULES THAT WERE IN EXISTENCE WHEN SOUTHEAST'S NOTICE WAS FILED.

At the time that SouthEast filed its Notice with the Commission, the FCC interpreted 47 U.S.C. §252(i) as permitting competing carriers to "pick and choose" individual elements of an existing interconnection agreement with the incumbent carrier. All that was required for the competing carrier to opt-in to these provisions was to notify the incumbent of the intent to adopt the desired provisions. SouthEast so notified BellSouth, and filed a contemporaneous Notice with this Commission.

The FCC's new rules were released July 13, 2004. Under those new rules, the FCC now requires competitive carriers to opt into an entire agreement, i.e., the "all or nothing" rule. Regardless of the wisdom, or lack thereof, behind these new rules, they were not released until more than a month after SouthEast filed its June 8, 2004, Notice.

Thus, by the time the FCC had changed its rules, SouthEast had already opted into the dispute resolution provision in the interconnection agreement between BellSouth and Cinergy Communications Company ("Cinergy"). This Commission correctly determined that it was bound to enforce SouthEast's Notice in light of the rules and regulations that were in effect at the time of the original filing. To rule otherwise would simply be an invitation for delay by the ILEC in proceedings such as the present case.

II. THE COMMISSION CORRECTLY APPLIED EXISTING FCC REGULATIONS TO THIS CASE.

BellSouth cites a number of cases that are inapplicable to the present matter. SouthEast did not file a petition or motion for arbitration of this matter. SouthEast simply filed a Notice that it was adopting the dispute resolution provision of an existing interconnection agreement. The Notice was effective upon its receipt by BellSouth and this Commission. At that point, this matter came to a conclusion. Only if this Commission did not permit competing carriers to opt into dispute resolution provisions would the issue have remained open for decision.

In its responses to the Commission's data requests in this case, SouthEast left open the possibility that the FCC change of rules could likely affect the outcome of this case if this Commission determined that competitive carriers could not opt into a dispute resolution clause. This Commission, however, has what SouthEast now understands to be a long-standing rule that competitive carriers were, in fact, able to opt into such clauses.

BellSouth cites several Federal cases, including U.S. West Comm., Inc. v. Jennings, 304 F.3d 950 (9th Cir. 2002), for the proposition that this Commission is bound to apply "existing FCC rules...regardless of whether the action was filed before or after the issuance of the particular FCC ruling." Initially, it should be noted that BellSouth fails to cite *any* cases in the Sixth Circuit where this Commission is located. Nonetheless, BellSouth's reliance on these cases rests on the erroneous presumption that SouthEast's Notice was not effective upon its filing to exercise SouthEast's statutory right to opt-into the dispute resolution clause in question.

All that was required under the statutes for a CLEC to opt-into an interconnection agreement was to notify the ILEC of this intent. No hearing or other procedure was required. This was the rule in effect at the time of SouthEast's notification. Thus, when BellSouth was notified, the dispute resolution had already been opted-into based on the statutory and FCC rules in effect at that time. Any change in the FCC's regulations after that date could no longer affect what had already taken place. BellSouth's references to decisions from other jurisdictions concerning interconnection agreement arbitrations have no bearing on the present case. This Commission should give no weight to the arguments set forth by BellSouth in its Motion for Rehearing.

CONCLUSION

This Commission should deny BellSouth's Motion for Rehearing. SouthEast adopted the dispute resolution procedures from the Cinergy Interconnection Agreement under the FCC's rules in effect at the time. The September 29, 2004, Order by this Commission was based on sound reasoning and should not be disturbed.

Respectfully submitted,

JONATHON N. AMLUNG
Attorney for SouthEast Telephone, Inc.
P.O. Box 1417
Louisville, KY 40201-1417
Telephone: (502) 568-5686

CERTIFICATION

I hereby certify that a true and correct copy of the foregoing was mailed this the 27th day of October, 2004, to:

Dorothy J. Chambers
601 W. Chestnut Street, Room 407
P.O. Box 32410
Louisville, KY 40232

Robert A. Culpepper
Suite 4300, BellSouth Center
675 W. Peachtree Street, N.E.
Atlanta, GA 30375

JONATHON N. AMLUNG