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December 15, 2006

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

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DEC 15 2006

**PUBLIC SERVICE
COMMISSION**

Re: Petition of SouthEast Telephone, Inc., for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection Under the Telecommunications Act of 1996 PSC 2006-00316

Dear Ms. O'Donnell:

In accordance with the Commission's revised procedural Order dated October 23, 2006, enclosed for filing in the above-captioned case is the Rebuttal Testimony of BellSouth's witness, Pamela A. Tipton. The original and three (3) copies of the Testimony are enclosed for filing. The Testimony is being emailed to SouthEast today.

Sincerely,


Mary K. Keyer

cc: Parties of Record

661501

AFFIDAVIT

STATE OF GEORGIA

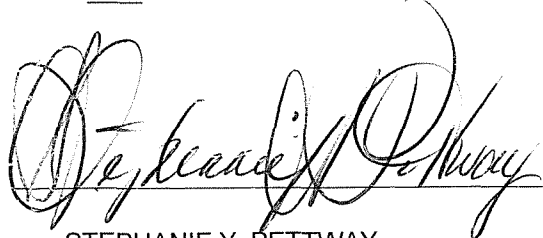
COUNTY OF FULTON

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Pamela A. Tipton, who, being by me first duly sworn deposed and said that:

She is appearing as a witness before the Kentucky Public Service Commission in Case No. 2006-00316, In the Matter of: Petition of SouthEast Telephone, Inc., for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection Under The Telecommunications Act of 1996, and if present before the Commission and duly sworn, her rebuttal testimony would be set forth in the annexed testimony consisting of 31 pages and 1 exhibits.


Pamela A. Tipton

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 12th DAY OF December, 2006

 Notary Public

STEPHANIE Y. PETTWAY
Notary Public, Gwinnett County, Georgia
My Commission Expires June 26, 2007

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BELLSOUTH TELECOMMUNICATIONS, INC.
REBUTTAL TESTIMONY OF PAMELA A. TIPTON
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

CASE NO. 2006-00316

DECEMBER 15, 2006

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS
PROCEEDING?

A. Yes. I filed direct testimony on November 3, 2006.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

My rebuttal testimony responds to portions of the direct testimony filed on November 3, 2006, by Joseph Gillan, Steven Turner, Carey Roesel, James Keller, and Robin Kendrick, on behalf of SouthEast Telephone, Inc. ("SouthEast") with respect to Issues A-2, A-3, A-4, A-5. The SouthEast witnesses did not address Issues A-1 and A-7 in their direct testimony. Thus I do not have any rebuttal testimony regarding those issues. (SouthEast previously withdrew Issue A-6.)

Q. DO YOU HAVE ANY PRELIMINARY COMMENTS?

A. Yes. First, many of SouthEast's "issues" are an attempt by SouthEast to be treated differently and/or more favorably than other Competitive

1 Local Exchange Carriers (“CLECs”). There are hundreds of CLECs
2 with a wide array of business plans. There is, however, one regulatory
3 system that is to be applied universally. In several of its “issues,”
4 SouthEast is asking for far more than it is entitled to under the 1996 Act
5 and for more favorable terms than other CLECs receive. No CLEC is
6 entitled to special or unique treatment.

7
8 Second, SouthEast proposes to include rates for section 271 elements
9 in its interconnection agreement. The overwhelming majority of rulings
10 on this issue -- at least 10 federal courts and at least 28 state
11 commissions – have concluded that state commissions do not have the
12 authority to decide pricing for section 271 elements.¹

13
14 Finally, to restate a preliminary comment from my direct testimony,
15 some of the issues SouthEast raised in this arbitration are legal in
16 nature and BellSouth’s responses will be based at least in part on legal
17 analysis. I am not an attorney and, consequently, I am not offering
18 legal opinions on these issues. BellSouth’s lawyers will make
19 BellSouth’s legal arguments in its post-hearing brief and other
20 appropriate filings.

21

¹ See, e.g., Alabama: *Competitive Carriers of the South, Inc.* Docket 29393, 2005 Ala. PUC LEXIS 126 at *42-*43 (Ala. PUC May 25, 2005); Florida: *Order on Generic Proceeding*, Docket No. 041269-TP, Order No. PSC-06-0172-FOF-TP, at 52; Louisiana: Order U-28131, at 3, February 22, 2006; Mississippi: Docket No. 2005-AD-139, *Final Order*, October 20, 2006, at 11; North Carolina: Docket No. P-55, SUB 1549, at 86; South Carolina: Docket No. 2004-316-C (S.C. PSC Feb. 28, 2006)

1 Q. PLEASE ELABORATE ON THE INAPPROPRIATENESS OF
2 INCLUDING SECTION 271 ELEMENTS IN AN INTERCONNECTION
3 AGREEMENT NEGOTIATED PURSUANT TO SECTION 252.

4
5 A. The overwhelming majority of court decisions on this issue conclude
6 that state commissions do not have authority to implement section
7 271.² While SouthEast may make an attempt to justify its position by
8 pointing to the Maine case,³ all four of the more recent court decisions
9 expressly disagree with the analysis and findings of the Maine court.

10
11 State commission authority in arbitrating interconnection agreements
12 extends only to implementing section 251, and section 252(d) limits the
13 state commission authority to set rates to facilities and services that
14 must be offered under sections 251(b) and (c). Section 252(a) directs
15 that agreements reached through negotiations are “pursuant to section
16 251.” There is no reference in section 252(a) to section 271. Section
17 252(c) directs state commissions to ensure that arbitrated agreements
18 “meet the requirements of section 251.” Again, there is no reference to
19 section 271. And section 252(d) sets forth state commission authority
20 for pricing standards and specifically limits the state commission’s

² See, e.g., *Illinois Bell Tel. Co. v. O’Connell-Diaz*, Case No. 05-C-1149, 2006 WL 2796488 (N.D. Ill. Sept. 28, 2006) (“Illinois Decision”); *Dieca Communication, Inc. v. Florida Pub. Serv. Comm’n* 447 F. Supp. 2d 1281 (N.D. Fla. 2006), Docket No. 06-15589 (11th Cir.); *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm’n*, No. 4:05-cv-1264, 2006 U.S. Dist. LEXIS 65536 (E.D. Mo. Sept. 14, 2006) (“Missouri Decision”), Docket Nos. 06-3701, 06-3726, 06-3727 (8th Cir.); *Verizon New England, Inc. v. New Hampshire Pub. Util. Comm’n*, Case No. 05-cv-94, 2006 WL 2433249 (D.N.H. Aug. 22, 2006) (“New Hampshire Decision”)

³ See *Verizon New England, Inc. v. Maine PUC*, 403 F. Supp. 2d 96, *appeal pending*

1 authority to services offered under sections 251(b) and (c). Nowhere in
2 section 252(d) is any section other than section 251 referenced. To the
3 contrary, section 252(d) expressly points to sections 251(c)(2),
4 251(c)(3), 251(c)(4) and 251(b)(5) and limits the Commission's rate-
5 setting authority to these sections.

6

7

ISSUE A-2

8

9 ***Issue A-2: What monthly recurring rates should be established in each***
10 ***pricing Zone for the voice-grade Local Loop element?***

11

12 Q. DO YOU HAVE ANY GENERAL COMMENTS ABOUT WITNESS
13 GILLAN'S TESTIMONY ON THIS ISSUE?

14

15 A. Yes. This arbitration proceeding is not the correct venue to consider
16 alternative rates for interconnection. The Commission has already set
17 rates for section 251 elements in its generic UNE pricing docket, where
18 all CLECs had the opportunity to participate. SouthEast's attempt to
19 create a separate, favorable pricing scheme for itself is inappropriate,
20 discriminatory and unfair to other competitors in the Commonwealth.

21

22 Further, even if this were the appropriate forum to determine UNE
23 charges, which it is not, the Commission should not consider Mr.
24 Gillan's testimony regarding proposed non-recurring charges.
25 SouthEast did not raise non-recurring charges as an arbitration issue.
26 Specifically, SouthEast framed Issue A-2 as follows: "What monthly

1 recurring rates should be established in each pricing zone for a voice-
2 grade Local Loop element?" And it stated Issue A-3 as: "What monthly
3 recurring rate should be established for the 'Port' component of the
4 'Platform' combination of elements?" Section 252 is clear the
5 Commission may only decide the issues set forth in the arbitration
6 petition (and response). Thus, if the Commission were inclined to set
7 rates in this case, which it should not do for the reasons explained
8 above and in my direct testimony, non-recurring charges would not be
9 appropriate for consideration in any event.

10

11 Q. ON PAGE 22 OF HIS DIRECT TESTIMONY, WITNESS GILLAN
12 RECOMMENDS LESSENING OR ELIMINATING THE PRICE
13 DIFFERENCES IN ZONE RATES FOR VOICE GRADE LOOPS.
14 WHAT IS YOUR RESPONSE?

15

16 A. Mr. Gillan's proposal has one purpose--to lower the UNE rates that
17 apply to the high cost areas where SouthEast has chosen to operate.
18 SouthEast made a business decision to operate in the high cost areas
19 of Kentucky and did so knowing what the rates were at the time
20 SouthEast made its decision. That business decision should not form
21 the basis for SouthEast to demand the averaging of costs across all
22 zones in Kentucky, thus lowering its costs to the detriment of its
23 competitors. Further, there is no legitimate reason why SouthEast
24 should pay different rates than every other CLEC in Kentucky.

25

1 Mr. Gillan advocates a change in the Commission's established UNE
2 zone structure to align UNE rates with BellSouth's retail rate zones.
3 The Commission, however, specifically rejected this zone methodology
4 in Administrative Case 382. The Commission ruled that using retail rate
5 zones as a basis for establishing UNE pricing did not conform to the
6 FCC's rules requiring UNE rates to be cost-based.⁴ The resulting rates
7 in Administrative Case 382 were based on a three-zone split of
8 ascending wire center costs consisting of those below the statewide
9 average, those above the statewide average, and those greater than
10 double the statewide average. The methodology of rank-ordering wire
11 centers by loop cost and dividing the wire centers into three zones
12 based on those costs is consistent with the methodology used by other
13 state commissions in BellSouth's nine-state region, and is the
14 methodology the CLEC community supported in each of the UNE cost
15 proceedings.

16
17 SouthEast wants the Commission to ignore the requirement that UNE
18 loop pricing zones be cost-based and, instead, asks the Commission to
19 "smooth" the rates between zones. Contrary to Mr. Gillan's assertions,
20 SouthEast's proposal is not a "zero sum" proposal, but results in a net
21 decrease overall to SouthEast and a reduction in the statewide rate.
22 Further, adopting Mr. Gillan's proposal would cause other competitors
23 to bear the cost for SouthEast's competitive presence in the

⁴ Kentucky Public Service Commission Order, *An Inquiry into the Development of De-averaged Rates for Unbundled Network Elements*, Administrative Case No. 382 at p.4, footnote 5.

1 marketplace. Specifically, Witness Gillan's proposal would result in a
2 66% increase to competitors in Zone 1 and an 18% increase in Zone 2,
3 while enjoying a 29% decrease in Zone 3 where a majority of
4 SouthEast's customers reside. Indeed, while SouthEast's in-service
5 units represent only 26% of the total units impacted by the proposed
6 zone shuffle and rate rebalance, SouthEast would enjoy 63% of the
7 reductions realized by such a proposal. The Commission should not
8 ignore the self-serving nature of SouthEast's proposal that would net
9 SouthEast approximately a \$93,000 reduction in costs per month, while
10 causing SouthEast's competitors an increase in cost.

11

12 Q. MR. TURNER ATTEMPTS TO PURSUADE THE COMMISSION TO
13 REEVALUATE LOOP COSTS BASED ON INDUSTRY TRENDS.
14 HOW DO YOU RESPOND?

15

16 A. Mr. Turner attempts to persuade the Commission that loop rates should
17 be reexamined based on anecdotes from industry publications and
18 executives which have touted reductions in cost for certain network
19 components. While I am not a cost expert, some components of the
20 telecommunications network have many factors beyond the price of the
21 vendor's product that impact the actual cost of the loop. A few of these
22 factors include labor, engineering, and outside contractor costs. Each
23 of these components has risen considerably during the past several
24 years. Additionally, copper prices, conduit placement costs, and pole
25 costs have risen. Other factors that would be reflected in an updated

1 cost calculation, such as increased urban sprawl and the loss of lines to
2 cable and cellular providers, would cause the cost per voice grade line
3 in the loop network to increase.⁵ To give weight to SouthEast's
4 argument would demand that a new cost proceeding take place each
5 and every time there was a fluctuation in any cost study input, whether
6 such fluctuation was up or down. Moreover, given that the FCC has not
7 yet ruled on its Notice of Proposed Rulemaking ("NPRM")⁶ regarding
8 the TELRIC methodology, it would be premature for this Commission to
9 undertake such an endeavor given the pending outcome of the NPRM.

10

11

ISSUE A-3

12

13 ***Issue A-3: What monthly recurring rate should apply to the "Port"***
14 ***component of the Platform combination?***

15

16 Q. WITNESS GILLAN MAKES SEVERAL RECOMMENDATIONS IN HIS
17 TESTIMONY WITH RESPECT TO RATES. WHAT IS YOUR
18 RESPONSE?

19

20 A. First, as I stated above, it is inappropriate to include in a section 251
21 agreement the rates, terms and conditions for a service no longer
22 required under section 251. Establishing a section 271 switch port rate
23 is not an appropriate section 251 arbitration issue. Further, to allow

⁵ Urban sprawl increases loop length and thus the cost. Line loss decreases utilization which also increases cost.

⁶ See FCC, *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements And the Resale of Service by Incumbent Local Exchange Carriers*, FCC WC Docket No. 03-173.

1 CLECs to obtain the exact same arrangements, pursuant to section
2 271, would render moot “all the FCC’s decisions, deliberations, and
3 conclusions about the adverse impact of the delisted UNEs on
4 competition under Section 251 of the Act.”⁷

5
6 In its TRO at ¶¶ 657-659, the Federal Communications Commission
7 (“FCC”) discusses the rate benchmarks for elements required under
8 section 271 that are no longer required to be unbundled under section
9 251. The rate that applies is not the low Total Element Long Run
10 Incremental Cost-based (“TELRIC-based”) rate. Rather, the pricing of
11 the section 271 element is subject to the “just, reasonable and
12 nondiscriminatory rate standard of sections 201 and 202.” (TRO ¶ 663).
13 The TRO expressly states that a Bell Operating Company (“BOC”) may
14 satisfy sections 201 and 202 by “showing that it has entered into arms-
15 length agreements with other, similarly situated purchasing carriers to
16 provide the elements at that rate.” (TRO ¶ 664). The more recent
17 nature of this ruling by the FCC should be accorded significantly more
18 weight than the now-outdated cites used by Mr. Gillan to support his
19 “cost-based” approach that date back as far as 1988 (decisions that
20 were released prior to the Telecom Act of 1996). It is noteworthy that
21 BellSouth has entered into more than 200 arms-length commercial
22 agreements with CLECs for the section 271 port element. The proper
23 course is for SouthEast to do what every other CLEC that wants

⁷ See *Mississippi Public Service Commission Docket No. 2005-AD-139 (Final Order October 20, 2006)*, at 11.

1 wholesale ports from BellSouth has done and enter into a commercial
2 agreement for it that is separate from its section 252 interconnection
3 agreement.

4
5 Q. DO YOU HAVE ANY COMMENTS ABOUT SOUTHEAST'S PORT
6 RATE PROPOSAL AS RECOMMENDED BY MR. GILLAN?

7
8 A. Yes. First, Mr. Gillan's "just and reasonable" approach does not follow
9 the FCC's directive, as it ignores the multitude of existing commercial
10 agreements for switching, and his proposed rate actually falls below
11 what would be the actual TELRIC rate for an unbundled switch port
12 under the rates approved by this Commission in Administrative Case
13 382. Second, even if the section 271 switching rate were up to this
14 Commission to decide, Mr. Gillan's suggested flat-rated port charge is
15 based on faulty assumptions about average minutes of use and the
16 supposed declining trend in minutes of use.

17
18 Q. HAS THE FCC WEIGHED IN ON THE RANGE OF PERMISSIBLE
19 RATES UNDER THE "JUST AND REASONABLE" STANDARD AS
20 APPLIED TO SWITCHING?

21
22 A. Yes. In the Brief of Respondents to the U.S. Court of Appeals
23 (TRRO),⁸ the FCC stated the following:

⁸ See United States Court of Appeals for the District of Columbia Circuit, *On Petitions for Review of an Order of the Federal Communications Commission*, Case No. 05-1095, dated September 9, 2005, at 36.

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Competitors' persistent reliance on UNE-P--even after extensive deployment of competitive switches--provides powerful evidence that TELRIC-based switching rates were not even close to "the high end" of the permissible range of rates under the "just and reasonable" standard of section 201(b).

Q. WHY DO YOU BELIEVE THAT SOUTHEAST'S PROPOSAL DOES NOT FOLLOW THE FCC'S GUIDANCE ON "JUST AND REASONABLE" IN THE DEVELOPMENT OF ITS FLAT-RATE PORT CHARGE?

A. The rate proposed by SouthEast, a rate that is inclusive of a "flat-rate" usage charge, falls below TELRIC. That is, BellSouth's actual minutes of use data multiplied by TELRIC rates ordered by this Commission results in a rate that is higher than the alleged "just and reasonable" cost-based rate proposed by SouthEast. Clearly, if the FCC contemplated that TELRIC-based rates were not even close to the "high end" of "just and reasonable," then a rate that falls below TELRIC must be rejected.

Q. THE SUGGESTED PORT CHARGE IS LARGELY BASED ON SOUTHEAST'S ASSUMPTION THAT AN AVERAGE WIRELINE CUSTOMER USES APPROXIMATELY 1,000 MINUTES-OF-USE PER MONTH. WOULD YOU PLEASE COMMENT?

A. SouthEast has not provided any data to support its assumption of 1,000

1 minutes-of-use per month. According to BellSouth's data, the average
2 minutes-of-use for Kentucky voice platform customers ranges from two
3 and a half to three times the 1,000 minutes-of-use assumption used by
4 SouthEast. Thus, SouthEast's rate is understated.

5

6 Q. MR. GILLAN ALSO ASSUMES THAT BELLSOUTH'S MINUTES OF
7 USE ARE DECLINING. DO YOU AGREE?

8

9 A. Yes, to a degree. Based on BellSouth's internal data, minutes-of-use
10 are declining, but are not significantly declining, as Mr. Gillan infers.
11 But, as noted above, the actual minutes-of-use according to BellSouth's
12 records are significantly higher than the level of 1,000 minutes-of-use
13 per month assumed by SouthEast.

14

15

ISSUE A-4

16

17 ***Issue A-4: What Interconnection Agreement provisions, and what***
18 ***forward-looking cost-based rates should apply to the adjacent meet-***
19 ***point interconnection arrangement with UNE-L?***

20

21 Q. THE TESTIMONY OF WITNESS TURNER ASKS THE COMMISSION
22 TO REQUIRE BELLSOUTH TO INTERCONNECT WITH SOUTHEAST
23 USING AN ADJACENT OFF-SITE COLLOCATION ARRANGEMENT.
24 HOW DO YOU RESPOND?

25

1 A. First, adjacent off-site collocation is neither required nor necessary.
2 Central Office Collocation is the method prescribed by the FCC for
3 gaining access to unbundled elements. Where space within a central
4 office is legitimately exhausted, carriers are required to offer adjacent
5 on-site collocation. BellSouth has sufficient space for various forms of
6 physical and virtual collocation in each of its Kentucky central offices.
7 And where space becomes legitimately exhausted, BellSouth offers
8 adjacent on-site collocation. SouthEast has not demonstrated that it
9 has been refused central office collocation space nor has it
10 demonstrated that it is somehow impaired from accessing unbundled
11 network elements (“UNEs”) via collocation.

12
13 Second, Mr. Turner has omitted key facts regarding the FCC rulings
14 and other Incumbent Local Exchange Carrier (“ILEC”) offerings that he
15 uses to support SouthEast’s position. He mischaracterizes both the
16 language of the FCC’s *Advanced Services Order* as well as AT&T’s use
17 of adjacent off-site collocation in his attempt to convince the
18 Commission to require BellSouth to offer this specific type of
19 collocation.

20
21 Q. HOW DOES MR. TURNER MISCHARACTERIZE THE ADVANCED
22 SERVICES ORDER?

23
24 A. First, on page 6 of his testimony, Mr. Turner claims that Paragraph 44
25 of the *Advanced Services Order* unequivocally requires ILECs to permit

1 “this form of collocation” (that is, adjacent off-site collocation).
2 Paragraph 44 of this Order does not, however, impose a general
3 requirement that ILECs such as BellSouth unilaterally permit adjacent
4 collocation, much less any “off-site” arrangement. Rather, Paragraph
5 44 states:

6
7 Finally, we require incumbent LECs, **when space is**
8 **legitimately exhausted in a particular LEC premises**, to
9 permit collocation in adjacent controlled environmental vaults or
10 similar structures to the extent technically feasible. (Emphasis
11 added).
12

13 Mr. Turner omitted the phrase in the cited paragraph of the *Advanced*
14 *Services Order* that limits the requirement to offer adjacent space
15 collocation to those instances where collocation space in the ILEC
16 central office is exhausted. In other words, the FCC does not require
17 off-site collocation arrangements.

18
19 Further, Mr. Turner contends that the intent of the FCC’s *Advanced*
20 *Services Order* supports providing adjacent off-site collocation and
21 asserts that the Order somehow requires both “on-site” and “off-site”
22 collocation (i.e., off-site is not on property that is adjacent to an ILEC’s
23 premises). The FCC, however, clarified its intent in Paragraph 42 of its
24 *Collocation Reconsideration Order*⁹ when it stated:

25

⁹ *Order on Reconsideration and Second Further Notice of Proposed Rulemaking* in CC Docket No. 98- 47, and *Fifth Further Notice of Proposed Rulemaking* in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 17806 (2000) (“*Collocation Reconsideration Order*”)

1 Consistent with the court’s opinion, we conclude that the
2 language of section 251(c)(6) does not restrict mandatory
3 physical collocation to places within incumbent LEC structures.
4 Instead, section 251(c)(6) requires physical collocation “at the
5 premises of the local exchange carrier.” **We find that this term**
6 **encompasses land owned, leased, or controlled by an**
7 **incumbent LEC as well as any incumbent LEC network**
8 **structure on such land.** (Emphasis added)

9
10 Additionally, in Paragraph 44 of the *Collocation Reconsideration Order*,
11 the FCC further clarified the definition of “premises”:

12
13 “[P]remises” includes all buildings and similar structures owned,
14 leased, or otherwise controlled by the incumbent LEC that house
15 its network facilities, all structures that house incumbent LEC
16 facilities on public rights-of-way, and all land owned, leased, or
17 otherwise controlled by an incumbent LEC that is adjacent to
18 these structures. **This definition, of course, excludes land and**
19 **buildings in which the incumbent LEC has no interest.**
20 (Emphasis added)

21
22 Finally, Mr. Turner’s claim that the “intent” of the *Advanced Services*
23 *Order* was to require adjacent collocation space as a way of making
24 more central office space available misses the mark entirely. The only
25 circumstances under which the FCC requires adjacent collocation is
26 when space within the central office is already exhausted.

27
28 The above-cited FCC Orders make clear that BellSouth must only offer
29 “adjacent collocation” as described above -- on its premises when
30 space within the central office is legitimately exhausted. SouthEast has
31 not demonstrated that it has been refused central office collocation or
32 that it is impaired in its ability to access UNEs through collocation.

1 There is no requirement that BellSouth provide adjacent "off-site"
2 collocation to SouthEast.

3

4 Q. DO OTHER ILECS OFFER ADJACENT OFF-SITE COLLOCATION?

5

6 A. Yes. AT&T makes it available through a tariff offering in several states,
7 but only when space is legitimately exhausted BOTH within the ILEC
8 central office AND on the adjacent ILEC premises. Similarly, Verizon
9 offers CLECs the option to construct or acquire a structure under its
10 Adjacent Structure collocation arrangement, but only when space is not
11 available in a Verizon central office.

12

13 Q. HAS MR. TURNER ACCURATELY REPRESENTED AT&T'S
14 OFFERING?

15

16 A. No. Mr. Turner conveniently misrepresents the availability of adjacent
17 off-site collocation arrangements in AT&T's territory. AT&T's tariff
18 specifically states that adjacent collocation arrangements are only
19 available in cases where physical collocation space is legitimately
20 exhausted, both in the central office and for on-site adjacent
21 arrangements. Further, the adjacent "off-site" collocation that is offered
22 by AT&T is actually a narrowly defined extension of adjacent "on-site"
23 collocation. Specifically, these ILECs define adjacent "off-site"
24 collocation as a collocation site located on a property that is contiguous
25 to or within one standard city block of the ILEC's central office.

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Q. ON PAGE 7, MR. TURNER ALLEGES THAT THE FCC'S *ADVANCED SERVICES ORDER* SOMEHOW OBLIGATES BELLSOUTH TO OFFER ADJACENT OFF-SITE COLLOCATION BECAUSE OTHER ILECS PROVIDE THIS FORM OF COLLOCATION. DO YOU AGREE?

A. No. Interestingly, the quotation relied upon by Mr. Turner from the *Advanced Services Order* limits the requirement to offer additional forms of collocation based on a presumption of technical feasibility to those "seeking collocation in any incumbent LEC premises." Specifically, at Paragraph 45 of the *Advances Services Order* (the same cite referenced by Mr. Turner) the FCC states:

We recognize that different incumbent LECs make different collocation arrangements available on a region by region, state by state and even central office by central office basis. Based on the record, we now conclude that the deployment by any incumbent LEC of a collocation arrangement gives rise to a rebuttable presumption in favor of a competitive LEC seeking collocation ***in any incumbent LEC premises*** that such an arrangement is technically feasible. (Emphasis added)

Adjacent off-site collocation is not "in" an incumbent LEC premises, nor is it even "on" an incumbent LEC's property.

ISSUE A-5

Issue A-5: What reciprocal compensation rates should apply to the transport and termination of local and ISP-bound traffic?

1 Q. WITNESS ROESEL TESTIFIES, BEGINNING ON PAGE 2 OF HER
2 DIRECT TESTIMONY, THAT BELL SOUTH SEEKS TO IMPOSE A
3 "BILL AND KEEP" REGIME FOR LOCAL AND ISP-BOUND TRAFFIC
4 ON SOUTHEAST. IN ADDITION, WITNESS ROESEL
5 RECOMMENDS SPECIFIC RECIPROCAL COMPENSATION RATES
6 TO BE CHARGED FOR TRAFFIC EXCHANGED BETWEEN THE
7 COMPANIES. HOW DO YOU RESPOND?

8
9 A. BellSouth is not attempting to force a "bill and keep" arrangement on
10 SouthEast. And while "bill and keep" is the standard BellSouth offering
11 in its interconnection agreement, my direct testimony references two
12 other sources for reciprocal compensation rates in lieu of "bill and
13 keep," i.e., 1) the rates that this Commission ordered in Administrative
14 Case No. 382 for Local Traffic as set forth in Exhibit A of Attachment 3
15 of BellSouth's Standard Interconnection Agreement and those rates
16 specified in the FCC's Order on the Core Forbearance Petition (FCC
17 04-421 in WC Docket 03-171, "*Core Order*") for ISP-bound traffic, or 2)
18 those rates specified in the FCC's Order on the Core Forbearance
19 Petition (FCC 04-421 in WC Docket 03-171, "*Core Order*") for all traffic
20 subject to section 251(b)(5). Thus, there are two rate structures for
21 reciprocal compensation available to SouthEast other than "bill and
22 keep."

23
24 Q. HOW WOULD THE COMMISSION-ORDERED RATES IN
25 ADMINISTRATIVE CASE NO. 382 AND THE RATES IN THE FCC'S

1 "CORE ORDER" BE IMPLEMENTED BY SOUTHEAST?

2

3 A. The Kentucky Commission's ordered rates would be applicable to ISP-
4 bound traffic *only* if BellSouth does not offer to exchange all traffic
5 subject to section 251(b)(5) at the same rates. Since BellSouth has
6 offered to exchange all traffic at the rate for exchanging Local and ISP-
7 bound traffic specified in the FCC's "Core Order" (\$0.0007 per minute)
8 the Kentucky Commission's ordered rates would not apply here.

9

10 Q. WITNESS ROESEL ADVOCATES A SEPARATE RATE FOR ISP-
11 BOUND TRAFFIC. WOULD YOU PLEASE COMMENT?

12

13 A. Yes. SouthEast appears to be attempting to maximize the
14 compensation it receives for ISP-bound traffic by proposing a
15 composite rate compiled from the rates ordered in Administrative Case
16 No. 382. The composite rate of \$0.0026265 proposed on pages 10-11
17 of witness Roesel's direct testimony is derived from state-ordered rates,
18 including tandem switching, and assumes 12 miles of common
19 transport. This resulting rate is nearly four times the FCC-ordered rate
20 of \$0.0007.

21

22 Q. ARE THERE REASONS WHY YOU DO NOT SUPPORT A SEPARATE
23 RATE FOR ISP-BOUND TRAFFIC?

24

25 A. Yes. In the FCC's "ISP Remand Order," 16 FCC Rcd at 9183, ¶71, the

1 FCC found that the availability of reciprocal compensation for ISP-
2 bound traffic, "...undermined the operation of competitive markets
3 because competitive LECs were able to recover a disproportionate
4 share of their costs from other carriers, thereby distorting the price
5 signals sent to their ISP customers." This proposal by witness Roesel
6 to charge a rate for ISP-bound traffic that is nearly four times the FCC-
7 ordered rate of \$0.0007 appears to be an attempt to implement such an
8 unbalanced compensation result rejected, or "warned against" by the
9 FCC.

10

11 Q. DO YOU HAVE OTHER COMMENTS WITH RESPECT TO THE
12 PROPOSED RECIPROCAL COMPENSATION RATE IN WITNESS
13 ROESEL'S DIRECT TESTIMONY?

14

15 A. Yes. The reciprocal compensation rate proposed by witness Roesel
16 includes a component representing tandem switching. In order for
17 SouthEast to be permitted to charge a local tandem switching rate,
18 SouthEast must demonstrate that it fulfills the FCC's criteria. The
19 FCC's definition of Local Tandem Switching includes unique functions
20 that a tandem switch must perform in order to be classified as a local
21 tandem switch. The FCC's rules state:

22

23 *Local Tandem Switching Capability.* The tandem switching
24 capability network element is defined as:

25

26 (i) Trunk-connect facilities, which include, but are not limited to,
27 the connection between trunk termination at a cross-connect
28 panel and switch trunk card;

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- (ii) The basic switch trunk function of connecting trunks to trunks; and
- (iii) The functions that are centralized in tandem switches (**as distinguished from separate end office switches**), including but not limited, to call recording, the routing of calls to operator services, and signaling conversion features. (Emphasis added)

FCC Rule 47 CFR § 51.319(c)(3).

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16

Further, FCC Rule 47 CFR § 51.711(a)(3) requires that SouthEast must demonstrate that its switch, "...serves a geographic area comparable to the area served by the incumbent LEC's tandem switch..."

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Q. HOW DOES BELLSOUTH USE TANDEM SWITCHES?

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A. BellSouth has both local and access tandem switches. First, I will address local tandem switches. Sometimes there are so many local switches in a given local calling area that it makes economic sense to create a local tandem switch to help handle the flow of local calls between the end office switches. In this case, the local tandem switch is connected to numerous end office switches in the local calling area, thereby eliminating the need to have every end office switch in that local calling area connected directly to every other end office switch in that local calling area. In this situation, a caller who is served by one end office switch can place a local call to a subscriber served by another end office switch, and the call can be routed through the local tandem switch, rather than being trunked directly to the called party's

1 local end office switch. Obviously, if there are a lot of end office
2 switches in a local calling area, using a local tandem switch to
3 aggregate traffic and to act as a central connection point makes
4 economic sense and avoids the extra trunking that would otherwise be
5 required to ensure that call blockage was limited to acceptable levels.

6
7 The local tandem switch is functionally similar to what is often referred
8 to as an access tandem switch. An access tandem switch is a switch
9 that is also connected to all of the local central offices in a given area.
10 The difference is that the access tandem switch handles both local and
11 long distance traffic while the local tandem switch only handles local
12 traffic.

13

14 Q. WHAT MUST SOUTHEAST DO TO BE PERMITTED TO CHARGE A
15 LOCAL TANDEM SWITCHING RATE?

16

17 A. In order for SouthEast to appropriately charge for tandem switching,
18 SouthEast must demonstrate to the Commission that: 1) its switches
19 serve a comparable geographic area to that served by BellSouth's local
20 tandem switches, and 2) its switches actually perform local tandem
21 switch functions as defined by the FCC. SouthEast should only be
22 compensated for the local tandem switch functions that it actually
23 provides in a geographic area comparable to the geographic area
24 served by BellSouth's local tandem switch.

25

1 Q. HAS SOUTHEAST DEMONSTRATED THAT ITS SWITCH FULFILLS
2 THE REQUIREMENTS OF THE FCC'S RULES FOR LOCAL TANDEM
3 SWITCHING?

4
5 A. No. SouthEast has provided no evidence that its Lexington switch
6 performs the functions specified by the FCC's rules to constitute local
7 tandem switching, or that its switch in Lexington serves a geographical
8 area comparable to the geographical area served by BellSouth's local
9 tandem switch. Given Ms. Roesel's testimony that SouthEast has just
10 one switch (the one located in Lexington), SouthEast has not, and likely
11 will not, be able to show that its switch performs these functions
12 separate from the end office switching function as required by the
13 FCC's rules. Simply because SouthEast's switch is *capable* of serving
14 a wide geographic area does not mean that SouthEast's switch is
15 *actually* serving that same geographic area.

16
17 Q. PLEASE SUMMARIZE YOUR COMMENTS.

18
19 A. Even if SouthEast were to successfully demonstrate that its switch
20 covers a geographic area comparable to the area served by an
21 incumbent LEC's (BellSouth's) local tandem switch, that demonstration
22 alone would not provide a sufficient basis for SouthEast to charge for
23 the local tandem switch function since it apparently does not perform
24 the basic functions necessary for a switch to be deemed a local tandem
25 switch in accordance with FCC rules. SouthEast, therefore, is not

1 entitled to a tandem switching component.

2

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ISSUE A-8

4

5 ***Issue A-8: What rates, terms, and conditions should apply to the Parties'***
6 ***respective "Dispatched/No Trouble Found" charges?***

7

8 Q. THE DIRECT TESTIMONY OF SOUTHEAST'S WITNESS KENDRICK
9 SUGGESTS SOME CHANGES BE MADE TO BELLSOUTH'S
10 POLICIES THAT APPLY TO CASES WHERE A TECHNICIAN IS
11 DISPATCHED TO REPAIR A TROUBLE ON A SOUTHEAST
12 CUSTOMER'S LINE, BUT NO TROUBLE IS FOUND. HOW DO YOU
13 RESPOND TO WITNESS KENDRICK'S TESTIMONY?

14

15 A. As an initial matter, the rates and policies employed by BellSouth with
16 respect to "no trouble found" are the same conditions that have been
17 approved by this Commission and under which other CLECs in
18 Kentucky are subject.

19

20 Q. UNDER WHAT TERMS AND CONDITIONS IS A "NO TROUBLE
21 FOUND" REPORT HANDLED WITH OTHER CLECS TODAY?

22

23 A. A "No Trouble Found" situation occurs when BellSouth receives a
24 trouble report that appears to warrant a dispatch, yet the dispatched
25 technician finds no evidence of a problem with the service once the
26 technician's diagnosis is complete. BellSouth encounters "No Trouble

1 Found” instances with its own customers. If such a trouble report were
2 initiated by a CLEC for one of its customers, however, BellSouth closes
3 the ticket and bills the CLEC a “No Trouble Found” charge for the
4 dispatch. Should the trouble recur within 30 days and is found to have
5 been caused by a condition on the BellSouth side of the demarcation
6 point, BellSouth will credit the CLEC any “No Trouble Found” charges
7 assessed for the initial or any subsequent trouble dispatches that were
8 caused by a recurring, or “intermittent” network problem, upon request.
9 If the trouble is ultimately determined to be caused by a condition on
10 the CLEC’s side of the demarcation point, there would be no credit due
11 the CLEC for the “No Trouble Found” charges.

12

13 A CLEC can control to some degree the number of “No Trouble Found”
14 charges by performing some basic testing on its customers’ lines or end
15 user equipment prior to reporting a trouble condition to BellSouth.
16 Indeed, BellSouth expects all CLECs to make a reasonable effort to
17 isolate the location of the trouble on a customer’s line and attempt to
18 identify the nature and possible source before submitting a trouble
19 ticket. This preliminary action may alleviate unnecessary expenditures
20 of resources and may prevent billing of a service call to SouthEast if the
21 problem is determined to be in SouthEast’s network or its customer’s
22 premise equipment.

23

24 Q. ON PAGE 4, WITNESS KENDRICK PROPOSES THAT SOUTHEAST
25 BE ALLOWED TO RECIPROCALLY CHARGE BELL SOUTH FOR

1 CASES WHERE BELL SOUTH DISPATCHES A TECHNICIAN, NO
2 TROUBLE IS FOUND, BUT THE TROUBLE RECURS. HOW DO YOU
3 RESPOND TO THIS PROPOSAL?

4
5 A. It would be both unnecessary and inappropriate to allow SouthEast to
6 charge BellSouth a “no trouble found” charge. First, it is not unusual for
7 troubles to be intermittent. That is, the specific cause of the trouble is
8 not present all the time. For example, during inclement weather a
9 cable may be influenced by moisture which induces a high resistance
10 trouble condition, resulting in service degradation or interruption. Once
11 the weather condition abates, service is no longer affected. It is not
12 rare, therefore, for a service technician to be dispatched to clear a
13 trouble on a line, only to find that no trouble is apparent, and to have
14 the problem appear again later. SouthEast implies that it should have
15 the ability to reciprocally bill BellSouth if no trouble is found, but the
16 trouble recurs, regardless of which party’s network may ultimately be at
17 fault. (Kendrick Direct, p. 4, lines 17-20)

18
19 Because it is not technically feasible for a BellSouth technician to
20 determine that an intermittent trouble is present on a line that appears
21 to be a fully functioning line at the time the technician is dispatched, it is
22 appropriate for BellSouth to charge SouthEast for a trouble dispatch
23 charge when no trouble is found at the time of the actual dispatch. The
24 fact that intermittent troubles exist in the network is a reality for all
25 telecommunications carriers, including SouthEast and BellSouth. As

1 such, intermittent troubles are a normal cost of doing business and
2 should be borne by all telecommunications providers. It is clearly
3 inappropriate to suggest that BellSouth reimburse SouthEast for any of
4 SouthEast's costs associated with a dispatch that BellSouth did not
5 initiate.

6

7 Q. ARE THERE PENALTIES TO BELLSOUTH IF THE INCIDENCES OF
8 TROUBLES ON SOUTHEAST'S CUSTOMER'S LINES SHOULD
9 INCREASE TO AN UNACCEPTABLE LEVEL?

10

11 A. Yes. There is a Self-Effectuating Enforcement Mechanism ("SEEM")
12 measurement, "Customer Trouble Report Rate and Percent Repeat
13 Customer Troubles Within 30 Days" approved by this Commission,
14 which would allow SouthEast to receive SEEM payments should
15 service to SouthEast not be at parity with BellSouth's service to its own
16 customers. Thus far in 2006, SouthEast has not received any penalty
17 payments for repeat customer troubles within 30 days, indicating that
18 the number of repeat troubles experienced by SouthEast is
19 proportionally less than the number of repeat troubles experienced by
20 BellSouth's end users. Further, the existence of this SEEM
21 measurement provides assurance that BellSouth would compensate
22 SouthEast in the event that repeat troubles for SouthEast exceed the
23 level of repeat troubles that BellSouth's own end users experience.

24

25

1 Q. TO YOUR KNOWLEDGE, DOES SOUTHEAST PERFORM ANY
2 TESTING OF A TROUBLE PRIOR TO CALLING FOR A BELLSOUTH
3 DISPATCH?

4
5 A. BellSouth has no access to SouthEast's records to ascertain the extent
6 to which SouthEast attempts to resolve a trouble on its own before
7 calling BellSouth.

8
9 Q. WITNESS KENDRICK RECOMMENDS THAT THE CURRENT 30-DAY
10 INTERVAL, DURING WHICH MULTIPLE DISPATCHES ON A LINE
11 WOULD BE CONSIDERED A SINGLE TROUBLE EVENT, SHOULD
12 BE EXTENDED TO 60 DAYS. DO YOU AGREE?

13
14 A. No. First, it is inappropriate for SouthEast to receive a different time
15 period for trouble determination than all other CLECs that interconnect
16 with BellSouth. Second, it is not uncommon for a repeat trouble to exist
17 and not be related to a previous trouble report. For example, a
18 customer could have a defective buried service wire and then, less than
19 30 days later, experience a bad cable pair due to an unrelated cause.
20 Although these two conditions are not related, BellSouth must still treat
21 the second instance as a repeat trouble. And, finally, the current 30-
22 day interval is the standard, not only between BellSouth and the other
23 CLECs in Kentucky, but for CLECs throughout BellSouth's nine-state
24 region.

25

1 There is no evidence to suggest that extending the current 30-day
2 interval to 60 days would alleviate in any way the occurrence of
3 intermittent troubles. Rather, a 60-day interval could encompass
4 separate and distinct trouble conditions and be mistakenly viewed as
5 the same issue.

6

7 Q. WHAT DO YOU RECOMMEND WITH RESPECT TO THIS ISSUE?

8

9 A. My recommendation is that the changes proposed by the direct
10 testimony of witness Kendrick with respect to “no trouble found”
11 charges should be rejected because they are unsupported,
12 unnecessary, and would allow SouthEast to be treated differently than
13 other CLECs in Kentucky. The SEEMs mechanism provides adequate
14 assurance to protect SouthEast’s interests.

15

16

ISSUE A-9

17

18 ***Issue A-9: Must BellSouth provide data on the location and type of***
19 ***certain network facilities and the number of customer lines and***
20 ***geographic service area of such facilities? If so, at what rate?***

21

22

23 Q. ON PAGE 2 OF HIS DIRECT TESTIMONY, WITNESS KELLER
24 STATES THAT SOUTHEAST NEEDS INFORMATION FROM
25 BELLSOUTH REGARDING THE GEOGRAPHICAL LOCATION OF
26 BELLSOUTH'S REMOTE TERMINALS (“RTs”) TO WHICH A
27 CUSTOMER'S PREMISES IS CONNECTED. PLEASE COMMENT.

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A. As an initial matter, BellSouth has no obligation under section 251 to provide the information requested by SouthEast and, thus, this issue is not under the jurisdiction of this Commission. For ease of administration, however, BellSouth has voluntarily agreed to include in its interconnection agreement, the commercial rates, terms and conditions for the Remote Terminal Data reports. The information BellSouth provides enables SouthEast to determine the location of BellSouth's RTs. This includes the RT location information and (in the format and content used by BellSouth), the carrier serving area, the number of customers and the addresses of all customers that are served by a particular RT. (See Exhibit PAT-1 for an example of this information). Thus, based on the direct testimony of witness Keller, BellSouth is already providing to SouthEast all of the data that Mr. Keller indicated SouthEast requires. In the case where BellSouth has an actual street address for an RT, BellSouth supplies that address. The RT addresses are supplied in a typical format such as 100 Somerset Road. Contrary to Mr. Keller's assertion, there is absolutely no requirement for BellSouth to ensure that its RT addresses could "be used by 911 dispatchers." Where no actual street address is available, BellSouth supplies the location information it utilizes for its own purposes.

Q. WITNESS KELLER, ON PAGE 4 OF HIS DIRECT TESTIMONY, OPINES THAT BELL SOUTH SHOULD PROVIDE THE REQUESTED

1 RT INFORMATION TO SOUTHEAST AT NO CHARGE, THEN GOES
2 ON TO RECOMMEND THAT BELL SOUTH PROVIDE THE DATA ON
3 A CD-ROM AT A RATE OF \$75 PER EXCHANGE. WHAT IS YOUR
4 RESPONSE?

5

6 A. SouthEast's proposed rate is nothing more than a "guesstimate" of
7 BellSouth's "costs" to provide the requested data. Again, these reports
8 are being made available on a commercial basis. The rate at which
9 BellSouth currently supplies the information as contained in the
10 standard interconnection agreement (<http://interconnection.bellsouth.com>) is the
11 commercial rate at which BellSouth is willing to make the data available
12 to all CLECs and is the appropriate rate. While BellSouth has agreed to
13 supply RT information, BellSouth is under no obligation to provide this
14 information to SouthEast, and certainly not information that is over and
15 above what is provided for in its terms and conditions (i.e., what is
16 provided to all other CLECs in Kentucky). Other CLECs purchase this
17 information using the same process and at the same rates as
18 SouthEast. SouthEast's request is simply another example of how
19 SouthEast desires to be treated differently than other CLECs and to
20 gain some competitive advantage. SouthEast should not receive
21 special treatment.

22

23 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

24

25 A. Yes.

BellSouth Remote Site Terminal Information Posted on CD's

In the 3Q06 standard agreement, BellSouth offers the following:

Remote Terminal Information. Upon request, BellSouth will provide <<customer_short_name>> with the following information concerning BellSouth's remote terminals: (i) the address of the remote terminal; (ii) the CLLI code of the remote terminal; (iii) the carrier serving area of the remote terminal; (iv) the designation of which remote terminals subtend a particular central office; and (v) the number and address of customers that are served by a particular remote terminal.

Below is an example of what is on a CD that is delivered to the CLEC:

RT Lines for CLECs

RT Lines for CRBOKYMA as of 3/29/2006 9:51:47 AM

Equipment location	RTA	CSA	Address	Telephone number
crboky1005	p 100 somerset rd	2291	6940 ky highway 39 s	6061234567
crboky1005	p 100 somerset rd	2291	7296 ky highway 39 s	6061234567
crboky1005	p 100 somerset rd	2291	245 ky highway 618 e	6061234567
crboky1005	p 100 somerset rd	2291	770 ky highway 618 e	6061234567
crboky1005	p 100 somerset rd	2291	25 mcmullin rd	6061234567
crboky1005	p 100 somerset rd	2291	389 mcmullin rd	6061234567
crboky1005	p 100 somerset rd	2291	6775 ky highway 39 s	6061234567
crbokyp0001	p 2 fall lick rd	none	2598 ky highway 39 n	6061234567

RTA = Remote Terminating Address CSA = Carrier Serving Area

CERTIFICATE OF SERVICE KPSC 2006-00316

It is hereby certified that a true and correct copy of the foregoing was served on the following individuals via email this 15th day of December 2006.

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