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May 1, 2007

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Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Blvd., PO Box 615
Frankfort, KY 40602

Re: *Petition of SouthEast Tel., Inc., for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection Under the Telecommunications Act of 1996*, Case No. 2006-00316

Dear Ms. O'Donnell:

On behalf of SouthEast Telephone, Inc. ("SouthEast"), I am transmitting with this letter SouthEast's Opposition to the Motion for Reconsideration and/or Rehearing filed by BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky. A hard copy of this letter and the attachments will be sent to the Commission tomorrow.

SouthEast's Opposition is accompanied by two attachments: (1) the affidavit of Darrell L. Maynard, President of SouthEast; and (2) the affidavit of Charles E. Richardson III, Vice President and General Counsel of Momentum Telecom, Inc.

The electronic version of Mr. Maynard's affidavit is unsigned, but is identical to the version that will be signed, notarized, and submitted in hard copy to the Commission tomorrow.

There are two versions of Mr. Richardson's affidavit: (a) a confidential version, and (b) a redacted version to be made available to the public, with certain confidential information deleted. We respectfully request that the confidential version be withheld from public inspection.

If you have any questions, please contact me.

Respectfully submitted,

David Sieradzki

David L. Sieradzki
Counsel for SouthEast Telephone, Inc.

cc: Amy E. Dougherty
Mary K. Keyer
Andrew D. Shore
Darrell Maynard

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of	)	
	)	
Petition of SouthEast Telephone, Inc. for Arbitration of	)	Case No. 2006-00316
Certain Terms and Conditions of Proposed Agreement	)	
with BellSouth Telecommunications, Inc. Concerning	)	
Interconnection Under the Telecommunications Act of	)	
1996	)	

AFFIDAVIT OF DARRELL L. MAYNARD

1. My name is Darrell L. Maynard. I am president of SouthEast Telephone, Inc. My business address is 106 Power Drive, Pikeville, KY 41502. This affidavit is being filed in connection with SouthEast's Opposition to AT&T Kentucky's Motion for Rehearing and/or Reconsideration in this case.

2. Since the issuance of the *Triennial Review Remand Order*, BellSouth (now AT&T Kentucky) has tried to impose substantial increases in its network element rates, especially the rates for the combination of loop, switching, and transport elements. This makes it extremely difficult for a competitor to build a business case scenario which includes the rural marketplace. Some may choose to concentrate on metropolitan areas where the population density is high and the costs of competitive technology (and/or ILEC unbundled loops) are relatively low, and serve rural areas, if at all, only casually.

3. In contrast, the rural markets are marked by low population densities, high technology costs and an much higher unbundled loop rate in Zone 3. Here, to economically serve the market, it is necessary for the rural CLEC to provide a bundle that includes voice, video and broadband services, in order to overcome the high cost of technology deployment.

These bundled revenues would help to defray the additional cost of rural deployment and provide an incentive for companies to invest in the broadband and advanced telecommunications infrastructure necessary to provide bundled services.

4. Until recently, there has been no technology available to encourage deployment of affordable facilities based competition in rural Kentucky. Only within the last two years, with the advent of the Broadband Loop Carrier and IP transport, have rural CLECs like SouthEast Telephone been able to affordably deploy both voice and broadband services to rural consumers. In the past, the lack of technology and the high cost of rural transport preclude competitors from facilities-based entry into the rural markets. Now such entry is possible, but will take quite a bit of time and expense to implement. AT&T/BellSouth's proposed drastic increase in the price of mass market switching would make it impossible to make this transition.

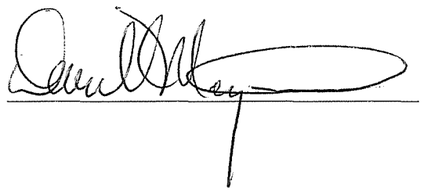
5. More recently, the challenges posed to rural CLECs' ability to provide broadband and advanced services are increasing. AT&T/BellSouth is proposing to increase its price for the switch port element from the $4.32 adopted by the PSC to $8.15 (residential and small business) or $11.15 (enterprise business) per month, plus additional usage charges. In the rural markets, if a CLEC were to accept AT&T Kentucky's standardized terms for a so-called "commercial agreement," its product margins would shrink to zero or less.

6. AT&T/BellSouth's exorbitant "commercial agreement" rates for the wholesale platform in rural markets not only gives the ILEC a competitive advantage, but negatively impacts the rural consumers. These rates (and the large disparity with costs in metropolitan areas) acts as a barrier to facilities based construction by rural competitors who wish to offer an alternative to the ILEC. In the end, it is the rural consumers who suffer from the lack of competition.

7. Consumers in rural communities will be able to benefit from "true" competition for broadband and advanced services only with the Section 271 application of "just and reasonable" pricing standards established in Sections 201 and 202 of the Communications Act.

8. A representative for AT&T/BellSouth states in his Affidavit attached to the Motion for Reconsideration and/or Rehearing that "as of February 2007, BellSouth was providing in the Commonwealth of Kentucky more than 70,000 local access lines to 57 different CLECs pursuant to commercial agreements." What the representative also fails to state is how many or what percentage of the 57 CLECs provide service in each Zone. A CLEC providing service with the high switching rate but considerably lower loop rate in Zone 1 would still have a more profitable business case than a CLEC operating in the rural Zone 3 who must endure both the high switching and extremely higher loop rate.

9. AT&T/BellSouth's smoke and mirrors with the numbers does not conceal the fact that a rural CLEC cannot accept the ILEC's "commercial agreement" and provide competitive broadband and advanced services to rural consumers. SouthEast Telephone had no alternative, and every right, to require AT&T Kentucky to live up to its obligations under Section 271 of the Telecommunications Act to provide mass market switching at just and reasonable rates. If competition in broadband and advanced services is to be enjoyed by the rural consumers as they are by their metropolitan counterparts, it is necessary for the Kentucky Public Service Commission to deny AT&T/BellSouth's Motion for Reconsideration and/or Rehearing.



DARRELL L. MAYNARD

Subscribed and sworn to before me this 2nd day of May, 2007.

Glenda Walters
NOTARY PUBLIC
Commission Expires: 4-21-08

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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	)	Case No. 2006-00316

SOUTHEAST TELEPHONE, INC. OPPOSITION TO AT&T KENTUCKY MOTION FOR RECONSIDERATION AND/OR REHEARING

SouthEast Telephone, Inc. ("SouthEast") respectfully requests that the Commission reject the Motion for Reconsideration and/or Rehearing ("Motion") filed on April 20, 2007 by BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky").

AT&T Kentucky presents nothing that would justify rehearing or reconsideration of the Commission's March 28, 2007 Order in this proceeding ("Order"). AT&T Kentucky's Motion is a transparent attempt to delay SouthEast's access to just and reasonable interconnection terms, abuse this Commission's processes, and thwart rural consumers' ability to benefit from competition.

First, the Commission should not countenance AT&T Kentucky's proposed enormous increase in the switch port rates, because such high rates would make it impossible for SouthEast or any reasonably efficient CLEC to compete effectively in rural, high-cost service areas.

Second, AT&T Kentucky cannot rely on the port rates that it has unilaterally imposed upon other CLECs, because those rates are by no means "market based" or "just and reasonable." The company previously asserted that its "commercial agreements have no

relevance to this arbitration" and refused to respond to SouthEast's data requests regarding such agreements. AT&T Kentucky cannot now be allowed to have its cake and eat it too.

Third, the Commission should reject AT&T Kentucky's attempt to manipulate this Commission's processes and frustrate the Congressionally mandated goal of expediting interconnection via the 9-month "shot clock" for arbitration proceedings. 47 U.S.C. § 252(b)(4)(C). AT&T Kentucky could have introduced the factual contentions and the meritless legal argumentation that it now attempts to present during the 9-month arbitration period, but it declined or refused to do. The company's attempt to "string out" the process at this point must be denied. For similar reasons, the Commission should refuse AT&T Kentucky's request to suspend SouthEast's access to just and reasonable interconnection terms until the conclusion of a potentially protracted judicial process.

These points are discussed at further length below.

I. AT&T Kentucky's Proposed Increase in Switch Port Rates Would Harm Consumers and Competition in Rural Kentucky

The Commission should deny AT&T Kentucky's anti-competitive proposal to increase the rates for the "port" component of the combined group of network elements (Issue A-3) from the cost-justified level established in the Order – $4.32 per month – up to an arbitrary rate of $8.15 (residential and small business) or $11.15 (enterprise business) per month, plus additional usage charges. *See* Motion, Exh. 1 (affidavit of J.E. Maziarz, Jr.), at 2-3, ¶ 7. When added to the existing deaveraged loop rates ($30.59 in Zone 3), AT&T Kentucky's proposal would raise the total monthly rates for the combination of loop and switching network elements in Zone 3 to $38.74 for residential customers and $41.74 for enterprise customers, plus usage and other charges. These wholesale rate levels would be higher than AT&T Kentucky's average retail rates – most of which recently were deregulated. Increasing the switch port rate to 189% to

258% of cost-based levels would impose an unlawful "price squeeze," preclude competitive entry in rural Kentucky, and ultimately enable AT&T Kentucky to re-monopolize the market and increase its now deregulated retail rates to consumers.

AT&T Kentucky's proposal would make it virtually impossible for SouthEast to execute its business strategy of deploying next-generation facilities in rural areas over the next 3-5 years, increasing its ability to offer voice-data-video service bundles, while continuing to serve existing customers using AT&T Kentucky's network elements until such deployment has been completed. The attached Affidavit of Darrell L. Maynard, President of SouthEast, demonstrates the devastating impact of AT&T Kentucky's proposed rates on SouthEast's ability to compete. 1/ As Mr. Maynard's affidavit demonstrates, in rural (Zone 3) areas, when AT&T Kentucky's proposed port rate increase is added to its already exorbitant loop rate, even the most reasonably efficient CLEC would not be able to obtain any product margin and would be unable to compete. In the end, it is the rural consumers who would suffer from this lack of competition. The rates AT&T Kentucky seeks to impose are thus the antithesis of "just and reasonable" and must not be considered.

II. The Rates in AT&T Kentucky's So-Called "Commercial Agreements" with Other CLECs Are Neither "Market Based" Nor "Just and Reasonable."

The Commission should reject AT&T Kentucky's proposal to introduce new evidence regarding the port rates paid by other CLECs in so-called "commercial agreements." In the Order, the Commission adopted the "just, reasonable, and nondiscriminatory" port rates proposed by SouthEast and accepted SouthEast's cost analysis developed based on publicly available data. Order at 5, 7. AT&T Kentucky does not offer – or even propose to offer – any

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1/ *See* Appendix A to this Opposition. This point also was addressed by SouthEast's witnesses in their prefiled and hearing testimony. *See* Hearing Tr. at 34-35, 61 (testimony of SouthEast witness James Keller); *id.* at 140-42, 151-52 (testimony of SouthEast witness Joseph Gillan).

cost data or other information to refute this analysis. Instead, AT&T Kentucky proffers information regarding the rates in its so-called "commercial agreements" with other CLECs. The Commission should decline to reopen this completed arbitration proceeding to consider any such information.

AT&T Kentucky does not and cannot show that the wholesale rates in other CLECs' so-called "commercial agreements" are "market based" – *i.e.*, available on a competitive basis in the marketplace at a price set by the marketplace. To the contrary, it is abundantly clear that AT&T Kentucky is imposing these rates unilaterally upon these CLECs. As the Commission is aware, SouthEast ran into a "stone wall" when attempting to negotiate port rates and other interconnection terms with BellSouth. BellSouth refused to seriously consider any of SouthEast's proposed terms other than its standard "take it or leave it" offer. Other CLECs suffered similar treatment, as demonstrated by the attached Affidavit of Charles E. (Rick) Richardson III, Vice President and General Counsel of Momentum Telecom. It is telling that, according to the affidavit of BellSouth's representative, a uniform "standard" rate was "agreed to" in each of these 57 supposedly "negotiated" agreements. Maziarz Aff. at 2, ¶ 7. This apparent uniformity severely undermines AT&T Kentucky's claim that each of these agreements was formed through a purportedly "commercial" negotiation in a competitive marketplace.

Accordingly, there is no basis for AT&T Kentucky's argument that the rates and terms in contracts of adhesion that it has unilaterally imposed are "just and reasonable." AT&T Kentucky provides no information to support a claim that its so-called "commercial agreements" with other CLECs constitute freely negotiated "arms-length agreements." To the contrary, all available evidence indicates that other CLECs effectively were coerced to accept these terms due to AT&T Kentucky's overwhelming market power. Moreover, while AT&T Kentucky claims that 57

other CLECs have signed these commercial agreements, the company provides no information on how many of these entities are actually in business – and most significantly, no information on whether and to what extent these entities are operating in Zone 3 rural areas such as those served by SouthEast. 2/

"In the absence of sufficient competition, we are concerned that telecommunications services available to customers might not be offered on just, reasonable and nondiscriminatory terms." *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, 20 FCC Rcd 19415, ¶ 103 (2005). This concern, which led the FCC to reject forbearance from the "just and reasonable" pricing requirement for Section 271 Competitive Checklist elements in the Omaha metropolitan area, is even greater in high-cost rural areas such as those served by SouthEast. "The economic barriers to self-providing facilities can be substantial" in such geographic areas, as the FCC recognized, and "it sometimes is not feasible for a reasonably efficient competitive carrier economically to construct all of the facilities necessary to provide a telecommunications service" to a particular set of customers within a reasonable time frame. *Id.*, ¶ 104.

In all events, at this point AT&T Kentucky must not be permitted to introduce information regarding its line counts and rates for services provided under "commercial agreements." AT&T Kentucky refused to respond to SouthEast's data requests on these precise issues during the 9-month statutory arbitration period. The company took the position that "DS0 commercial agreements have no relevance to this arbitration," and on that basis refused to

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2/ It is also significant that AT&T Kentucky's representative presents a misleading partial selection of data and omits other potentially significant information. For example, he discusses the number of lines that the company provided pursuant to commercial agreements in Zones 2 and 3, but he says nothing about the number provided in Zone 3, which includes most of SouthEast's service area. *See* Maziarz Aff. at 2, ¶ 6; Maynard Aff. at 3 ¶ 8. SouthEast asked AT&T Kentucky to produce this very information (Data Request #5) and the company refused to do so.

respond to SouthEast's interrogatories regarding the number of lines provided under commercial agreements and the rates paid pursuant to those agreements. *See* BellSouth Responses and Objections to SouthEast's Data Requests (filed Sept. 29, 2006), Item Nos. 5 and 6. Principles of "equitable estoppel" preclude AT&T Kentucky from refusing to disclose this information at one point, and then attempting to interject the data later when it feels it would be advantageous to do so, even though the window for presenting factual evidence has closed and the Commission has ruled against the company. 3/ AT&T Kentucky must not be allowed to have its cake and eat it too.

To be sure, the Order mentions that "if AT&T Kentucky believes that this rate is inappropriately low, then AT&T Kentucky should submit justification to the Commission for rates that it believes are appropriate." Order at 7. The Commission always has the opportunity to revisit the generic network element rates in a proceeding such as a rate case, and SouthEast recommended that it do so. *See* Direct Testimony of Steven E. Turner (filed Nov. 3, 2006), at 30-37. Indeed, AT&T Kentucky itself conceded – in the section of its brief concerning switch port rates (Issue A-3) – that "the generic change of law docket (*BellSouth Telecommunications, Inc.'s Petition to Establish Generic Docket*, KPSC Case No. 2004-00427), which includes this very issue, is still pending before this Commission." BellSouth Post-Hearing Brief (filed Feb. 23, 2007), at 10 (emphasis added).

But the possibility that AT&T Kentucky could submit justification for appropriate rates, as noted in the Order, cannot be construed in the manner AT&T Kentucky suggests – as an "invitation" to reopen the record, present additional evidence, and in effect delay final resolution of this proceeding indefinitely. AT&T Kentucky Motion at 2, 6. At this point, the Commission

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3/ "Equitable estoppel: The doctrine by which a person may be precluded by his act or conduct, or silence when it is his duty to speak, from asserting a right which he otherwise would have had." Black's Law Dictionary, abridged 5th ed. (1980), at 280 (emphasis added).

should insist that AT&T Kentucky comply with its obligation to provide the Section 271 Competitive Checklist elements to SouthEast at the just and reasonable rates adopted in the Order.

III. AT&T Kentucky Must Not Be Permitted to Abuse the Commission's Processes or Delay SouthEast's Access to Just and Reasonable Terms for Interconnection

The Commission should reject AT&T Kentucky's effort to "game" the Commission's processes. AT&T Kentucky offers nothing in its Motion that it could not have submitted during the 9-month arbitration window. As noted above, the factual information that the company now seeks to introduce was in the company's possession throughout the 9-month period, but the company improperly refused to provide it. As a result, SouthEast was forced to present its case, and the Commission was forced to render its decision, based on limited information. Order at 7 & n.10; 47 U.S.C. § 252(b)(4)(B).

AT&T Kentucky does not propose to offer any new factual information that it could not have provided in September 2006 in response to SouthEast's data requests, or in its witness's testimony. As for legal argumentation, the Motion provides nothing new at all; it essentially rehashes the same points that the company argued before, with the exception of citing one 7-year-old case (regarding off-site adjacent collocation) that the company "waived" by neglecting to cite or discuss in its brief. 4/ Nothing in AT&T Kentucky's Motion justifies reopening or reconsidering the conclusions in the Commission's Order.

4/ While the Commission should not even consider AT&T Kentucky's newly discovered 2000 court case, the case is distinguishable from the present situation. The court in that case noted that "it may be true that, in some circumstances, a CLEC's right to interconnection and access may justify" the form of off-site collocation at issue there, but reversed the Washington commission's order because it had relied only on the "collocation" provisions of Section 251(c)(6). *US West Communications, Inc. v. American Telephone Technology, Inc.*, 2000 U.S. Dist. LEXIS 19046, *5. By contrast, here this Commission relied on the Section 251 "interconnection" and "access" provisions, and related FCC rules, as well as the collocation provisions. *See* Order at 9-10 & n.17. For its part, SouthEast has been referring to the same arrangement interchangeably as "adjacent meet-point interconnection" and "adjacent off-site collocation"

Indeed, to reopen the case as AT&T Kentucky proposes would violate the intent of Congress. The Telecommunications Act of 1996 includes a 9-month "shot clock" for arbitration proceedings. 47 U.S.C. § 252(b)(4)(C). It also directs state commissions to establish a specific "schedule for implementation of the terms and conditions by the parties to the agreement." § 252(c)(3); *see also* § 271(c)(1)(A). The clear intent of these statutory provisions is to expedite the resolution of disputed interconnection issues and facilitate competitive entry. AT&T Kentucky's Motion improperly attempts to "string out" the dispute resolution process and delay SouthEast's access to the forms of interconnection that it needs in order to compete effectively – and to which it is entitled by law. The Commission must reject it.

IV. The Commission Should Not Hold Any Part of the Order in Abeyance Pending Resolution of the District Court Appeal of a Separate Commission Order

For similar reasons, the Commission should deny AT&T Kentucky's request to hold in abeyance the Order's resolution of the switch port price (Issue A-3) pending resolution of AT&T Kentucky's appeal to the U.S. District Court of a separate PSC decision – *BellSouth Telecommunications, Inc.'s Notice of Intent to Disconnect SouthEast Telephone, Inc. for Non-Payment*, Case Nos. 2005-00519 & 2005-00533 (Aug. 16, 2006) ("*No-Disconnects Order*"). The issues in that case are not identical to those presented here; the District Court could uphold the PSC's exercise of Section 271 authority, or might not address the issue at all even if the court decides to sustain AT&T Kentucky's position on alternative grounds. For example, AT&T Kentucky argued that, "[i]ndependently [from the issue of the Commission's authority over Section 271 Competitive Checklist elements], and equally important, there is no existing binding contractual

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in various filings in the case. *Compare* Petition for Arbitration (June 22, 2006) at 11-13 *with* Direct Testimony of Steven E. Turner (Nov. 3, 2006). And in any event, the *US West* case was wrongly decided, for the reasons set forth in SouthEast's Post-Hearing Brief (at 17-20) and in the Order. *See also US West Communications v. AT&T Communications*, 31 F.Supp. 2d 839, 855 (D. Ore. 1998) (affirming PUC decision to require collocation where technically feasible in locations outside central offices).

obligation to provide these facilities at the *rates* set by the PSC, so the PSC cannot have been enforcing the agreement." 5/ Thus, the District Court's resolution of the case (and any further appeals) could well have no effect on the issues in the present arbitration proceeding.

Suspending SouthEast's access to the switch port at just and reasonable interconnection terms until the conclusion of a potentially protracted judicial process would violate the public interest. To be sure, the Commission deferred resolution of billing disputes raised in the context of the *No-Disconnects* proceeding because the order in that proceeding is under appeal. *SouthEast Telephone, Inc.'s Motion to Compel*, Order, Case No. 2007-00071 (Feb. 28, 2007). But the issues raised in that Motion to Compel had not been directly addressed by the Commission in the *No-Disconnects Order*, by contrast to the Order in this case where the Commission reached a specific and explicit resolution of Issue A-3. More significantly, the Order in the present proceeding has not been appealed, and AT&T Kentucky has not even attempted to satisfy the four-factor test needed to justify a stay of the Order pending appeal.

AT&T Kentucky recently persuaded the Commission not to continue holding another proceeding in abeyance, even though an appeal to the U.S. District Court was still pending. The Commission agreed with AT&T Kentucky that the relevant state commission "has ruled and, despite dPi's appeal to United States District Court, this case should go forward before the Commission." *dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc.*, Case No. 2005-00455 (Jan. 26, 2007), at 1-2. AT&T Kentucky cannot have it both ways. As in the *dPi* case,

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5/ BellSouth Consolidated Reply in Support of Motion for Summary Judgment, Case No. 3:06-cv-00065-KKC (D.Ky.) (filed Jan. 26, 2007), at p.14. *See also* BellSouth Memorandum of Law in Support of Motion for Summary Judgment (filed Nov. 8, 2006) at 33 ("The PSC order violated the 1996 Act by imposing obligations that are contrary to an approved interconnection agreement, allowing SouthEast to disregard the existing agreement, and acting outside of its federal-law authority to arbitrate and approve interconnection agreements"); BellSouth Complaint for Declaratory and Injunctive Relief (filed Sept. 12, 2006), at 17 ("Third Claim for Relief – Violation of Federal Law By Imposing Obligations Not in Interconnection Agreement"), & at 18 (Fourth Claim for Relief – Due Process and Lack of Reasoned Decision-making).

the Commission should decline to hold this case in abeyance, but rather should mandate that AT&T Kentucky comply with the Commission's binding and effective Order.

* * * * *

In sum, for the reasons stated above, AT&T Kentucky's Motion should be denied.

Respectfully submitted,

SOUTHEAST TELEPHONE, INC.

/s/

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May 1, 2007

PUBLIC VERSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:	)	
	)	
Petition of SouthEast Telephone, Inc., for Arbitration of	)	
Certain Terms and Conditions of Proposed Agreement	)	Case No. 2006-00316
With BellSouth Telecommunications, Inc. Concerning	)	
Interconnection Under the Telecommunications Act of 1996	)	

AFFIDAVIT

STATE OF ALABAMA
SHELBY COUNTY

Comes now Charles E. Richardson III, General Counsel and Vice President of Momentum Telecom, Inc. ("Momentum"), and being first duly sworn, does depose and say as follows:

1. I serve Momentum, a competitive local exchange carrier ("CLEC") operating in the state of Kentucky, as its General Counsel and Vice President and have done so during all relevant periods covered by the matters raised in this Affidavit. Momentum has been providing service in the state of Kentucky since December 16, 2001. Its customers are overwhelmingly residential consumers, many located in small towns and rural areas throughout the state.

2. I execute this affidavit in response to the representation by BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky ("AT&T Kentucky" or "AT&T") that its "commercial agreements" are evidence that its local switching rates are just and reasonable, to-wit: **[Begin Confidential]**

[End Confidential]

3. As a threshold point, the mere existence of these agreements provides no evidence as to whether the rates themselves are just and reasonable. A firm with market power – which AT&T undeniably enjoys in Kentucky – has the ability to charge rates that provide economic rents. Indeed, the entire purpose of rate regulation is to prevent a firm with market power from charging rates that are unreasonably high. The Commission cannot determine whether the rates are just and reasonable merely by observing the existence of commercial agreements[2] but must consider other indicia such as (at a minimum) the relationship of the price to cost and the effect of the price on the pattern of competition. The Commission should also consider the circumstances confronting CLECs that signed AT&T Kentucky's commercial agreements, including their motivation and alternatives.

4. Momentum is presumably one of the CLECs referred to by AT&T Kentucky, in that it currently operates in Kentucky under a March 2007 commercial agreement, which replaced a March 2006 commercial agreement, which, in turn, replaced an expired interconnection agreement.[3] Despite repeated requests, AT&T Kentucky categorically refused to negotiate the rates it unilaterally incorporated in the two commercial agreements. AT&T Kentucky's negotiating posture in connection with its commercial agreements was—and has always been—"take it or leave it" with respect to all rates. AT&T Kentucky explained its refusal to negotiate with Momentum using the same argument offered in its Motion: **[Begin Confidential]**

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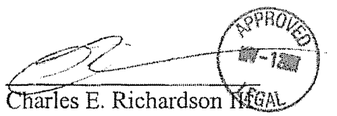
1 *See* Motion for Reconsideration and/or Rehearing of BellSouth Telecommunications, Inc.,(d/b/a AT&T Kentucky), Case No. 2006-00316, at 6-7 (filed April 20, 2007) ("AT&T Kentucky Motion").

2 The Commission should view the term "commercial agreement" with the same skepticism Voltaire used to describe the Holy Roman Empire – "As neither Holy, nor Roman, nor an Empire." AT&T Kentucky's commercial agreements are neither commercial nor agreements as the term is commonly used to denote a meeting of the minds between two parties negotiating from equal bargaining positions.

3 The expired interconnection agreement is the subject of an arbitration pending before this Commission (Case No. 2006-00058).

7. AT&T Kentucky's theory that the mere existence of commercial agreements demonstrates just and reasonable rates is flawed both theoretically and practically. Certainly, Momentum's signing of a commercial agreement with AT&T Kentucky is not evidence of a just and reasonable rate – it evidences only a lack of alternatives and monopoly pricing. In the absence of just and reasonable prices for AT&T Kentucky's elements, Momentum has ceased sales and marketing efforts in Kentucky.[7] It must hope for relief before its normal "churn" drives it out of business and further solidifies AT&T Kentucky's market dominance. Absent regulatory relief, AT&T Kentucky's "arms-length" agreement turns out to be a thinly disguised "strong-arm" tactic.



Charles E. Richardson

ACKNOWLEDGEMENT

State of Alabama
Shelby County

on May 1, 2007

I, Teri M. Hennington, a notary public in and for Shelby County, State of Alabama, do hereby certify that Charles E. Richardson III, who is personally known by me, appeared before me and, after being first duly sworn, did make the statements that appear in the above affidavit and did sign the same.

Teri M. Hennington
Notary Public
My commission expires the 23 day of April, 2011 [SEAL]

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7 Momentum cannot even accept new customers in Zone 3 because AT&T Kentucky's unreasonably high local switching rate causes its wholesale rates for residential customers in Zone 3 to rise above higher AT&T Kentucky retail rates for customers in Zone 3, thus creating a price squeeze and effectively prohibiting Momentum from offering service to those customers.