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September 25, 2008

**RECEIVED**

SEP 25 2008

PUBLIC SERVICE  
COMMISSION

Ms. Stephanie L. Stumbo  
Executive Director  
Public Service Commission  
P.O. Box 615  
Frankfort, KY 40602

**RE: *SouthEast Telephone, Inc. v. BellSouth Telecommunications, Inc.  
d/b/a AT&T Kentucky  
Case No. 2008-00279***

Dear Ms. Stumbo:

Please find enclosed an original and ten copies of SouthEast Telephone, Inc.'s Motion for Intermediate Relief.

Please acknowledge receipt of this filing by placing your file-stamp on the extra copy and returning to me via our runner.

Very truly yours,

STOLL KEENON OGDEN PLLC

Deborah T. Eversole

Enclosure

cc: Parties of Record

101164 117856/543656 1

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

SOUTHEAST TELEPHONE, INC )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 BELLSOUTH TELECOMMUNICATIONS, INC. )  
 d/b/a AT&T KENTUCKY )  
 )  
 Defendant )

CASE NO. 2008-00279

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COMMISSION

**MOTION OF SOUTHEAST TELEPHONE, INC.  
FOR INTERMEDIATE RELIEF**

SouthEast Telephone, Inc. (“SouthEast”), by counsel, for its Motion for Intermediate Relief, states as follows:

**BACKGROUND**

It has now been over nine months since the Commission issued its Order in 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* (December 12, 2007 (the “*Change of Law Order*”). In the *Change of Law Order*, the Commission unequivocally ordered BellSouth Telecommunications, d/b/a AT&T Kentucky (“AT&T”) to provide to its competitors commingled unbundled network elements and combinations of such elements with all wholesale services and facilities, including network elements required to be provided under Section 271 of the Telecommunications Act of 1996. What’s more, the Commission ordered AT&T to comply with federal law requiring it to perform the functions necessary to commingle those services and facilities. *See Change of Law Order*, at 12 (“Rule 51.309(f) provides that ‘upon request an incumbent shall perform the functions

necessary to commingle [a UNE or UNE combinations] with one or more facilities or services obtained at wholesale from an incumbent.”) The *Change of Law Order* is as clear as it could possibly be.

Over three months passed.

In April 2008, AT&T sent to SouthEast an amendment to the parties’ interconnection agreement that would conform that agreement to the Commission’s *Change of Law Order*. SouthEast signed it on May 9, 2008. A copy is attached as Exhibit 1 to SouthEast’s Complaint. Over five weeks later, SouthEast began attempting to place orders for the commingled Section 251 elements and Section 271 elements to which the Commission’s Order, the preexisting Federal Communications Commission regulations, and the parties’ contract entitled it. On June 19, 2008, SouthEast placed a manual order, a copy of which is attached as Exhibit 1 to SouthEast’s Response to AT&T’s Answer, for a loop (USOC UEQ2X (Unbundled Copper Loop Non Designed) and an unbundled exchange port (USOC UEPRC). AT&T did not fill the order.

SouthEast submitted repeated inquiries by email and by telephone. Finally, Eileen Mastracchio, AT&T’s Wholesale Support Manager, emailed an explanation of sorts to SouthEast from AT&T’s “Methods Group.” The email, dated July 9 [Exhibit 2 to SouthEast’s Response to AT&T’s Answer], indicated that AT&T understood precisely what SouthEast wanted. It further indicated, also precisely, that SouthEast could not have it:

“what they want is to commingle a UCL (unbundled Copper loop non design) with Commercial port on one order. I told them their is no such process. If they want to purchase UCL on 1 order and 2nd order for the standalone port. they can connect the 2 at their collo.”

Only July 15, SouthEast filed its Complaint with the Commission. On August 1, AT&T submitted its Answer, claiming that it had no clue “what SouthEast is trying to achieve” [AT&T

Answer at 1] and surmising that SouthEast wanted – of all things -- a wholesale platform combined with a subloop. This alleged confusion is baffling: The July 9 email definitively establishes that AT&T knew exactly what SouthEast was ordering.

Additional weeks passed, during which the parties conversed by telephone.

On September 11 – nine months after issuance of the *Change of Law Order* that entitles SouthEast to commingled Section 271 and Section 251 elements, five months after AT&T sent SouthEast the amendment that entitles SouthEast to commingled Section 271 and Section 251 elements, and two months after the date of the email refusing to provide Section 271 and Section 251 elements (and demonstrating that AT&T knew exactly which elements SouthEast wanted, and how it wanted them) – the parties and Staff convened for an informal conference.

At the informal conference, AT&T claimed it needs yet *more* time to develop a process to provide SouthEast with the commingled elements to which SouthEast is already entitled.

SouthEast is injured each and every day that AT&T's compliance with the Commission's Order is delayed.

### **RELIEF REQUESTED**

It is not the purpose of this Motion to rehash the discussion at the informal conference: Wes Maynard, SouthEast's technical expert at the informal conference, made it clear that, based on his knowledge of AT&T's central offices, and based on the hundreds of orders for nondesigned copper loops made and filled in the past, SouthEast's request is hardly exotic. Suffice it to say that SouthEast questions AT&T's alleged need for more time, given the time that already has elapsed since issuance of the *Change of Law Order* that made its obligations clear.

It is, however, the purpose of this Motion to urge the Commission to issue an Order ensuring that SouthEast will no longer bear the expense of AT&T's recalcitrance. Currently, AT&T is out of compliance with the Commission's *Change of Law Order*, with FCC regulations, and with the parties' interconnection agreement, and there is simply no legal or equitable reason that SouthEast should suffer from AT&T's failure to comply.

There is a great deal of difference between what SouthEast currently pays AT&T to serve its customers and what it is entitled to pay for the commingling arrangement it ordered. AT&T knows that. The difference hobbles SouthEast financially and delays rollout of its service. AT&T knows that too.

The Commission can, and should, order AT&T to issue SouthEast bill credits for the difference between the price it currently charges for the customers SouthEast wishes to convert to the commingling arrangement and the existing contract prices for the unbundled copper loop non designed, USOC UEQ2X, and the unbundled exchange port, USOC UEPRC. The difference is easily computed, and issuance of bill credits for that difference would bring AT&T into at least nominal compliance with the law and its contractual obligations. There is absolutely nothing in the law or in the parties' contract that justifies further, or indeed, *any* delay. There is, however, precedent for billing adjustments to reflect the price that should properly be paid pursuant to law and the parties' contract, despite potential technical issues, with provision for true-up later. *See, e.g.*, Amendment to the Agreement Between SouthEast Telephone, Inc. and BellSouth Telecommunications, Inc. (reflecting billing adjustments for provision of wholesale digital subscriber line service on resold, as opposed to UNE-P, arrangements) [Exhibit 1 hereto].

SouthEast further moves the Commission to order issuance of the requested bill credits for the customers to be converted to the required commingling arrangement retroactive to July 1,

2008, the date AT&T should reasonably have had the conversions in place subsequent to SouthEast's mid-June Order. In addition, SouthEast urges the Commission to maintain this case on its docket and to require monthly reports from AT&T describing the activities it has undertaken to develop the allegedly complex process by which it will fill orders for commingled elements it already sells separately.

Respectfully submitted,



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*Counsel for SouthEast Telephone, Inc.*

#### **CERTIFICATE OF SERVICE**

I hereby certify that, on this 25<sup>th</sup> day of September, 2008, a full and complete copy of the foregoing, with attachment, was sent by United States Mail, postage prepaid, to Mary K. Keyer, 601 W. Chestnut Street, Room 407, P.O. Box 32410, Louisville, Kentucky, 40232 and Lisa S. Foshee, 675 W. Peachtree Street, N.W., Atlanta, Georgia 30375



Counsel for SouthEast Telephone, Inc.

## **EXHIBIT 1**

**AMENDMENT  
TO THE  
AGREEMENT BETWEEN  
SOUTHEAST TELEPHONE INC.  
AND  
BELLSOUTH TELECOMMUNICATIONS, INC.  
DATED October 9, 2001**

Pursuant to this Amendment, (the "Amendment"), SouthEast Telephone, Inc. ("SouthEast"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated October 9, 2001 ("Agreement")

WHEREAS, the Parties executed an amendment on May 23, 2003 to add provisions to the Agreement for the adoption of Section 2.10.1 in Attachment 2 of the Cinergy Communications Company's Interconnection Agreement dated March 20, 2003, for the state of Kentucky, and

WHEREAS, the Parties desire to add provisions to the Agreement consistent with the obligations of the Kentucky Statute KRS 278.546; Chapter 167 of the ACTS ("Kentucky Statute") and the Kentucky Public Service Commission's Orders dated April 29, 2005, and May 17, 2006 in Case No. 2004-00501 ("Kentucky Orders");

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. Consistent with the Kentucky Statute and the Kentucky Orders, the Parties hereby delete Sections 2.14.5 through 2.14.5.8 of Attachment 2 of the Agreement, titled DSL Transport Service on UNE-P, and replace such Sections with the following:

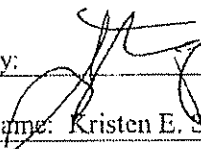
2.14.5 SouthEast shall not place, and BellSouth shall have no obligation to accept, any orders for wholesale DSL on UNE-P lines on or after the Effective Date hereof. To the extent SouthEast provisions service to any End Users using BellSouth's wholesale DSL service over resold lines ("Embedded Base") and BellSouth is providing such resold lines to SouthEast at the rate SouthEast would otherwise pay for a UNE-P loop/port combination in the pertinent UNE Zone under this Agreement (the "UNE-P Rate"), BellSouth will continue to provision its wholesale DSL service to the Embedded Base, but after the Effective Date SouthEast shall pay for such resold lines in accordance with Attachment 1 of the Agreement, and BellSouth shall have no obligation to issue a credit to SouthEast for the difference between the resale rate and the UNE-P Rate, nor shall BellSouth be obligated to remit to SouthEast, or to issue a credit for, a surrogate for access charges. In the event SouthEast requests DSL on a resold line after the Effective Date, SouthEast shall purchase such lines pursuant to Attachment 1 of the Party's Interconnection Agreement.



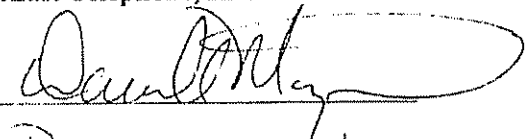
2. This Amendment shall be deemed effective on May 19, 2005 ("Effective Date").
3. *To the extent BellSouth has issued to SouthEast any credits as described in paragraph 1 above for the difference in the resale rate and the UNE-P rate, or as a surrogate for access charges, for resale DSL lines in service after the Effective Date, such amounts shall be subject to true-up, with interest at the rates set forth in the Agreement.*
4. All of the other provisions of the Agreement shall remain in full force and effect.
5. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties have executed this Amendment the day and year written below

**BellSouth Telecommunications, Inc.**

By:   
\_\_\_\_\_  
Name: Kristen E. Shore  
\_\_\_\_\_  
Title: Director  
\_\_\_\_\_  
Date: 5/30/06  
\_\_\_\_\_

**SouthEast Telephone, Inc.**

By:   
\_\_\_\_\_  
Name: Darrell Maynard  
\_\_\_\_\_  
Title: President  
\_\_\_\_\_  
Date: May 30, 2006  
\_\_\_\_\_