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**BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
Frankfort, Kentucky**

FEB 21 2001

PUBLIC SERVICE  
COMMISSION

In the Matter of )

Petition by SouthEast Telephone, Inc. )  
for Arbitration of Certain Terms and Conditions )  
of a Proposed Agreement )  
with BellSouth Telecommunications, Inc. )  
Pursuant to 47 U.S.C. § 252 )

Docket No. \_\_\_\_\_

**PETITION BY SOUTHEAST TELEPHONE FOR ARBITRATION  
UNDER THE TELECOMMUNICATIONS ACT OF 1996**

SouthEast Telephone, Inc. ("SouthEast") hereby requests the Kentucky Public Service Commission (the "Commission") to arbitrate unresolved issues resulting from SouthEast's negotiations with BellSouth Telecommunications, Inc. ("BellSouth") for the renewal of the parties' existing interconnection agreement (the "Initial Agreement"). In support, SouthEast shows as follows:

1. This Petition includes: 1) SouthEast's letter formally requesting negotiations with BellSouth (Attachment A); and 2) a matrix of the disputed issues and the respective positions of each party on those issues (Attachment B).

**PARTIES**

2. SouthEast, a Kentucky corporation, is authorized to provide telecommunications services in the state of Kentucky. SouthEast, which is headquartered in Pikeville, provides local and long distance telephone service, other telecommunications services and Internet access to the central

Appalachian mountain region of the state, including Fayette, Washington, Casey, Whitley, Bell, Harlan, Perry, Mercer, Boyle, Jessamine, Lee, Lawrence, Martin, Clark, Estill, Powell, Montgomery, Breathitt, Floyd, Johnson, Bourbon, Harrison, Scott, Woodford, Letcher, Pike, Madison, Garrard, Lincoln, and Rockcastle counties.

3. BellSouth is a corporation organized and formed under the laws of the State of Georgia, having an office at 675 West Peachtree Street, Atlanta, Georgia 30375. BellSouth provides local exchange and other services within its franchised areas in Kentucky. BellSouth is a "Bell Operating Company" ("BOC") and an "incumbent local exchange carrier" ("ILEC") under the terms of the Telecommunications Act of 1996 (the "Act").<sup>1</sup>

#### JURISDICTION

4. This Commission has jurisdiction over this Petition pursuant to Section 252(b)(1) of the Act.<sup>2</sup> Pursuant to the Act, SouthEast formally requested negotiations with BellSouth for the renewal of the Initial Agreement on September 14, 2000 (see Attachment A) and now files this Petition for resolution of disputed issues between the 135th and 160th days following such request. Pursuant to Section 252(b)(4)(C) of the Act, this Commission must resolve each issue set forth in the Petition and Response no later than June 14, 2001 (nine months following September 14, 2000, the date on which BellSouth received SouthEast's request for negotiation)

#### STANDARD OF REVIEW

5. This arbitration must be resolved by the standards established in Sections 251 and 252 of the Act and the effective rules adopted by the FCC in the *Local Competition Order*.<sup>3</sup>

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<sup>1</sup> 47 U.S.C. §§ 153(35), 251(b).

<sup>2</sup> 47 U.S.C. § 252(b)(1).

Section 252(c) of the Act requires a state commission resolving open issues through arbitration to:

- (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251; [and]
- (2) establish any rates for interconnection, services, or network elements according to subsection (d) [of section 252].<sup>4</sup>

6. Section 251 of the Act provides the minimum standards for BellSouth in negotiating and providing interconnection to CLECs. Those standards include unbundled access to BellSouth's facilities and information and to its network's functions and services on a nondiscriminatory basis. BellSouth must provide interconnection with CLECs that is at least equal in quality to that BellSouth provides to itself and "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."<sup>5</sup> This section further requires that the local exchange carrier must provide nondiscriminatory access to UNEs at any technically feasible point, individually and in combinations, and at cost-based rates.<sup>6</sup>

### BACKGROUND

7. The Act imposes duties on BellSouth to enable competitive local exchange companies ("CLECs") to enter BellSouth's local telephone market. These duties include providing CLECs with the ability to interconnect with BellSouth's network at any technically feasible point and providing nondiscriminatory access to BellSouth's network. The Act

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<sup>4</sup> See 47 U.S.C. §§ 251, 252; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 13042 (1996) (*Local Competition Order*), *aff'd sub nom. AT&T Corp. v. Iowa Utilities Board*, 119 S.Ct. 721 (1999).

<sup>5</sup> 47 U.S.C. § 252(c)(1)-(2).

<sup>6</sup> 47 U.S.C. § 251(c)(2)(D).

<sup>6</sup> 47 U.S.C. § 251(c)(3).

mandates that CLECs may provide local exchange service through interconnection with BellSouth's facilities, through resale of BellSouth's services, or through access to BellSouth's unbundled network elements ("UNEs") at cost-based rates. The Act's purpose is to ensure widespread local exchange competition for the benefit of consumers.

8. Despite the Act's clear intent, widespread local exchange competition cannot develop until SouthEast and other CLECs are able to obtain interconnection terms with BellSouth which fully comply with Sections 251 and 252 of the Act. Only when CLECs are assured of nondiscriminatory access will they be able to commit the substantial resources necessary for entering the local services market on a broad scale. Accordingly, if competition is to flourish, then this Commission must require BellSouth to provide CLECs, such as SouthEast, with interconnection at fair and reasonable rates, terms and conditions.

9. BellSouth and SouthEast ("the Parties") signed the Initial Agreement on May 15, 1997. The Initial Agreement is a two-year agreement that expired on May 15, 1999. Pursuant to the terms of the Initial Agreement, the Parties have continued to operate under the Initial Agreement, pursuant to its terms.<sup>2</sup>

10. SouthEast formally requested the initiation of negotiations with BellSouth on September 14, 2001. Prior to and since the request was sent, SouthEast's negotiations team has met numerous times with BellSouth's team either face to face at one of the Parties' offices or through conference calls. In support of the negotiations and their respective positions, the Parties have exchanged drafts of proposed terms and conditions. Except for the issues in dispute as outlined below and one provision regarding the right of SouthEast to adopt another carrier's

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<sup>2</sup> Specifically, under Section III of the Initial Agreement, the Parties are governed by its terms until the effective date of any subsequent agreement. Upon the execution of a new Interconnection Agreement, the terms of the new agreement will apply retroactively to May 15, 1999.

agreement (Attachment C), SouthEast and BellSouth have agreed to the terms contained in BellSouth's template agreement as provided to SouthEast.<sup>2</sup>

### ISSUES IN DISPUTE

11. As is apparent from the attached issues matrix (Attachment B), SouthEast and BellSouth have reached agreement on a substantial number of issues. However, there are issues that remain in dispute. The issues presented are narrow and specific:<sup>2</sup>

1. Should BellSouth provide local number portability to SouthEast via remote call forwarding, in light of the excessive costs that SouthEast would have to incur to use long-term number portability and the rural nature of SouthEast's service area?
2. Should SouthEast be able to purchase digital subscriber line ("DSL") service from BellSouth pursuant to an intrastate tariff filed with the Commission?
3. Should BellSouth offer SouthEast DSL service at a wholesale discount?
4. Are BellSouth's \$20 secondary service change charge and its \$3.50 and \$19.99 charges, respectively, for electronic and manual LSR service order processing, unjust, unreasonable, discriminatory, and anti-competitive, in that these charges are excessive, and the secondary service change charge and the LSR service order charges effectively recover revenues from SouthEast twice for the same service provided by BellSouth?
5. When BellSouth seeks to transfer a SouthEast local customer to BellSouth, should SouthEast be entitled to require BellSouth to submit LSR service orders to

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<sup>2</sup> The text of this template agreement, which BellSouth refers to as its standard "Third Quarter 2000 Resale Interconnection Agreement," is available on the Internet at [http://www.interconnection.bellsouth.com/become\\_clec/be\\_clec\\_resale\\_agree.html](http://www.interconnection.bellsouth.com/become_clec/be_clec_resale_agree.html).

SouthEast, comply with other SouthEast procedures, and pay secondary change charges and/or LSR service order charges to SouthEast, such that forms, procedures, and charges are reciprocal and comparable to those that apply when SouthEast seeks to transfer a customer's local service to BellSouth?

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<sup>2</sup> To the extent BellSouth disputes any of the issues SouthEast believes have been resolved, SouthEast includes those issues for resolution in this arbitration and will supplement this Petition and provide additional relevant documents, as necessary.

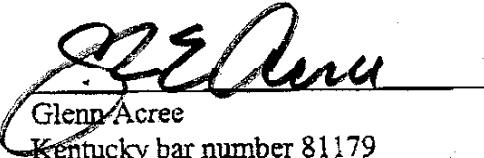
**REQUESTED COMMISSION ACTIONS**

13. SouthEast respectfully requests that the Commission take the following actions as a result of this Petition:

- A. Issue a procedural order to establish a schedule for all forms of discovery (depositions, interrogatories, data requests, and requests for admission), direct and rebuttal testimony, prehearing conference, hearing, and post-hearing briefs;
- B. Arbitrate the unresolved issues between SouthEast and BellSouth, as set forth in Attachment B, within the timetable specified in the Act; and
- C. Take such other and further actions as the Commission deems appropriate.

Respectfully submitted,

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Attorneys for  
SOUTHEAST TELEPHONE, INC.

Dated: February \_\_, 2001

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition was furnished to the following party of record on this 21 day of February, 2001:

VIA OVERNIGHT MAIL:

Creighton E. Mershon Sr.  
BellSouth Telecommunications, Inc.  
601 West Chestnut, Room 407  
Louisville, Kentucky 40203

VIA OVERNIGHT MAIL

Doug Lackey  
BellSouth Telecommunications, Inc.  
675 West Peachtree Street  
Room 4300  
Atlanta, GA 30375-0001

  
Glenn Agree



# **SouthEast Telephone**

ATTACHMENT A

January 19, 2001

Ms. Shirley H. Thomas  
3535 Colonnade Parkway North  
Room W1A  
Birmingham, Alabama 35243

Dear Ms. Thomas:

We are requesting that the interconnection negotiation start date for the Interconnection Agreement between BellSouth Telecommunications and SouthEast Telephone begin on September 14, 2000 with the period of arbitration beginning on January 27, 2001 (135<sup>th</sup> day) and ending on February 21, 2001 (160<sup>th</sup> day).

We appreciate your cooperation on this matter.

If you have any questions, please contact our office.

Sincerely,

Darrell Maynard

Agreed on: \_\_\_\_\_ 2001.

By:

  
Name/Title

1/25/01 Agreed on: January 19, 2001  
Shirley H. Thomas / Manager Interconnection Serv

Voice 606-432-3000

PO Box 1001 - Pikeville, KY 41502

Fax 606-433-0500

**ATTACHMENT B****KENTUCKY****Issues for Arbitration between SouthEast Telephone and BellSouth****Number Portability**

	<b>Issue</b>	<b>SouthEast Telephone Position</b>	<b>BellSouth Position</b>
1.	Should BellSouth provide local number portability to SouthEast via remote call forwarding?	Yes. Given the focus of its business on rural and residential customers, SouthEast would have to incur excessive costs in order to use database-based long-term number portability. Number exhaustion (one of the main reasons for moving from remote call forwarding to a database-based solution) is not a serious issue in SouthEast's generally rural service area, especially in light of the recent area code splits. Accordingly, BellSouth must provide number portability to SouthEast Telephone using remote call forwarding, with each party bearing its own costs.	No. BellSouth has updated its systems to adopt a database-based long-term number portability solution, and all CLECs must also now switch over to long-term number portability. Alternatively, SouthEast Telephone can purchase remote call forwarding at retail rates out of the BellSouth tariff.

**DSL Issues**

2.	Should SouthEast be able to purchase DSL service from BellSouth pursuant to an intrastate tariff filed with the Commission?	Yes. The Kentucky Commission correctly decided this issue in IgLou Internet Services case, in which it required BellSouth to file an intrastate tariff for DSL.	No. DSL is a jurisdictionally interstate service only.
3.	Should BellSouth offer SouthEast DSL service at a wholesale discount?	Yes. DSL is an offering that BellSouth is currently providing at retail to subscribers that are not telecommunications carriers. Therefore, under 47 U.S.C. § 251(c)(4), SouthEast must be able to purchase DSL for resale at a discounted wholesale rate.	No. BellSouth does not offer DSL to end users as a retail telecommunications service.

## ATTACHMENT B

## OSS Issues

	Issue	SouthEast Telephone Position	BellSouth Position
4.	Are BellSouth's \$20 secondary service change charge and its \$3.50 and \$19.99 charges, respectively, for electronic and manual LSR service order processing, unjust, unreasonable, discriminatory, and anti-competitive?	<p>Yes. First, the secondary service charge appears to be excessive. It was developed prior to the 1996 Act as a charge for end user customers, is not meant for CLECs, and was approved by the Commission, if at all, as an end user charge, not a charge for a CLEC.</p> <p>Second, the imposition of the secondary change charge, in effect, allows BellSouth to compensate for the loss of the customer. The charge is therefore anti-competitive and discriminatory.</p> <p>Third, the secondary service change charge and the LSR service order charges appear to cover the same services performed by BellSouth. Accordingly, those charges appear to give BellSouth double recovery of the same costs.</p>	No. BellSouth has the right to recover the secondary change charge any time there is a change in responsibility for the customer, i.e., the customer switches to a new carrier. This charge covers the processing of that change. As a carrier reselling BellSouth services, SouthEast must pay the same charges as an end user (net of the wholesale discount). The LSR service order charges compensate BellSouth for the development and operation of its OSS.
5.	When BellSouth seeks to transfer a SouthEast local customer to BellSouth, should SouthEast be entitled to require BellSouth to submit LSR service orders to SouthEast, comply with other SouthEast procedures, and pay secondary change charges and/or LSR service order charges to SouthEast, such that forms, procedures, and charges are reciprocal and comparable to those that apply when SouthEast seeks to transfer a customer's local service to BellSouth?	<p>Yes. First, SouthEast needs to be notified when one of its customers transfers to BellSouth to ensure that the customer actually meant to transfer its service. Currently, SouthEast receives notice weeks after the transfer. In contrast, BellSouth requires prior notice before SouthEast can switch a BellSouth customer to SouthEast's service.</p> <p>Second, SouthEast must perform services for BellSouth in order to transfer a customer, and BellSouth should pay for these services. Comparable procedures and the same charges should apply reciprocally to both companies.</p>	No. SouthEast should be subject to the same existing process that BellSouth imposes on all CLECs. Reciprocity is not appropriate.

**ATTACHMENT C**

Add to Section 15:

The effective date of the adopted term shall be the date of the request to adopt such term by SETEL or as otherwise agreed to by the parties.