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JUN 30 2006

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COMMISSION

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**MEMO**

June 29, 2006

**TO:** Beth O'Donnell

**FROM:** David L. Sieradzki

- For your information
- As you requested
- For your review and comment
- For your files
- Other

Enclosed are two versions of the same letter -- one version is CONFIDENTIAL and is requested to be withheld from public inspection; the other is redacted and may be made public.

Also, since the letter is filed in two dockets, we're enclosing two sets (10 copies of the confidential version and 10 copies of the public version) - one set for Case No. 2005-00519 and one set for Case No. 2005-00533.

Please don't hesitate to call with any questions. Thanks very much.

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June 28, 2006

David L. Sieradzki  
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REDACTED VERSION FOR PUBLIC INSPECTION  
CONFIDENTIAL AND PROPRIETARY INFORMATION REDACTED

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JUN 30 2006

PUBLIC SERVICE  
COMMISSION

Beth O'Donnell  
Executive Director  
Public Service Commission  
Commonwealth of Kentucky  
211 Sower Blvd., P.O. Box 615  
Frankfort, KY 40602-0615

**RE: BellSouth Telecommunications, Inc., Notice of Intent to Disconnect SouthEast Telephone for Non-Payment, Case No. 2005-00519;** ✓

**SouthEast Telephone, Inc., Complainant, v. BellSouth Telecommunications, Inc., Defendant, Case No. 2005-00533;**

**BellSouth Deposit Invoice/Notice of Security Deposit Requirement Increase (5/31/06)**

Dear Ms. O'Donnell:

SouthEast Telephone, Inc. ("SouthEast") respectfully requests that the Commission issue an injunction or take other action to prevent BellSouth Telecommunications, Inc. ("BellSouth") from carrying out its renewed threat to terminate SouthEast's service unless SouthEast remits certain claimed payments by June 30, 2006.


On December 16, 2005, the Commission specifically ordered that "BellSouth shall not discontinue the provisioning of any functions or services which are the subject of this dispute during the pendency of these proceedings." *Order*, Cases No. 2005-00519 and 2005-00533, issued December 16, 2005. The Commission's *Order* also held in abeyance BellSouth's attempt to disconnect SouthEast for alleged non-payment (Case No. 2005-00519) pending resolution of the Complaint that SouthEast brought against BellSouth (Case No. 2005-00533).

In direct contravention of the Commission's mandate, BellSouth has once again threatened "termination of service" unless SouthEast, by June 30, 2006, remits a very significant "security

deposit” payment to BellSouth (or an equivalent Irrevocable Letter of Credit or Surety Bond) in the amount of [BEGIN CONFIDENTIAL NON-PUBLIC INFORMATION] \*\*\*\*\*  
[END CONFIDENTIAL NON-PUBLIC INFORMATION]. See letter from Paul Wilbanks, Credit Manager, BellSouth, to Darrell Maynard, SouthEast, dated May 31, 2006 (attached hereto). The “security deposit” payment that BellSouth now seeks, like the payments at issue in BellSouth’s earlier attempt to terminate SouthEast’s service – are based on an estimate (for a one-month period) of the difference between what SouthEast has actually paid and what BellSouth believes should have been paid. The Commission has made it clear that the dispute over these payments (*i.e.*, the difference between the rates that SouthEast has paid BellSouth for the “platform” combination of network elements and BellSouth’s claimed rates for “resale services”) should be resolved in the Complaint proceeding (Case No. 2005-00533) – and not through a threat of unilateral service termination by BellSouth.

SouthEast respectfully requests that the Commission issue an injunction or take other appropriate action to prevent BellSouth from carrying out its illegal threat. BellSouth also respectfully requests that the information marked above as confidential be withheld from public inspection, consistent with the Commission’s March 31, 2006 Order in Case No. 2005-00533.

Very truly yours,



David L. Sieradzki  
Counsel for SouthEast Telephone, Inc.

cc: Amy E. Dougherty, Counsel for Kentucky PSC  
Joan A. Coleman, VP/Regulatory/External, BellSouth  
Robert A. Culpepper, Counsel for BellSouth  
Paul Wilbanks, Credit Manager, Business Credit Management, BellSouth  
Darrell Maynard, President, SouthEast Telephone



5/31/2006

Attn: Darrell Maynard  
Southeast Telephone, Inc.  
106 Scott Avenue  
Pikeville KY 41501

RE: DEPOSIT INVOICE/NOTICE of SECURITY DEPOSIT REQUIREMENT INCREASE

Dear Mr. Maynard,

In accordance with BellSouth corporate policies, the Business Credit Management organization has conducted a credit assessment of your company. Unfortunately, the credit and financial information available to us at this time indicates that your accounts are not adequately secured.

Therefore, BellSouth is exercising its right per the Interconnection Agreement to request additional security in the amount of [REDACTED]. This deposit is based on an estimate of your monthly charges for a one-month period.

BellSouth has applied all credit standards to Southeast Telephone, Inc. on a non-discriminatory basis and it is our judgment changes in Southeast's financial status so warrant and/or gross monthly billing has increased beyond the level initially used to determine the level of security.

In order to prevent the potential for termination of service, please remit the above mentioned security deposit by 6/30/2006. This amount can be submitted either in cash (guaranteed funds), in the form of an Irrevocable Letter of Credit or as a Surety Bond (required BellSouth formats enclosed) to:

Cash deposits should be sent to:

**Attn : ICS Deposits  
Michelle Alexander  
BellSouth PRO Center  
208 N. Caldwell Street – RM 146  
Charlotte, NC 28201**

An Irrevocable Letter of Credit or Surety  
Bond should be sent to:

**Attn: Paul Wilbanks  
BellSouth Telecommunications, Inc.  
Business Credit Management  
1025 Lenox Park Blvd. - 9B28  
Atlanta, GA 30319**

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**Private/Proprietary:** No disclosure outside  
BellSouth except by written agreement



Your account(s) will be reviewed periodically to determine if any adjustments to the security deposit are warranted. If you have any questions regarding the contents of this letter, please contact me as soon as possible.

Respectfully,

A handwritten signature in cursive script that reads "Paul Wilbanks".

Paul Wilbanks  
Credit Manager  
404 986-1927

Enclosures 2

**STANDBY LETTER OF CREDIT**

(To Be Reproduced on Issuing Bank's Letterhead)

Date:  
Irrevocable Letter of Credit No.:

Amount:  
Expiration Date:  
Place of Expiration:

*[Applicant Party Name and Address]*

*[Beneficiary Name and Address]*

To Whom It May Concern:

We hereby establish this Irrevocable Letter of Credit in favor of BellSouth Telecommunications, Inc. for one or more drawings not exceeding in total *[face amount]* U.S. Dollars.

Draft(s) must be accompanied by the original of this letter of credit (with any amendments) and by:

- I.
  - A. Your signed statement certifying that "The funds drawn hereunder are due BellSouth Telecommunications, Inc. on account of *[Account Party]* as a result of failure to pay, within terms quoted therein, invoice(s) issued to *[Account Party]* by BellSouth Telecommunications, Inc., and BellSouth Telecommunications, Inc. has not otherwise received payment on such invoices."; and
  - B. A summary of the unpaid invoice(s).

OR;

- II.  
Your signed statement certifying that "The funds drawn hereunder represent the amount of payments BellSouth Telecommunications, Inc. has received from or for the account of *[Account Party]*: (i) within 90 days prior to the filing of a petition by or against *[Account Party]* with a United States Bankruptcy Court; (ii) within 90 days prior to the making by *[Account Party]* of an assignment for the benefit of

creditors; or (iii) *[Account Party]* became the subject of any proceeding, voluntary or involuntary, which under applicable State or Federal law could result in the return of such payment(s). The amount of such payment(s) has been (or will promptly after payment of the accompanying draft be) returned to *[Account Party]* or otherwise to the appropriate person."

OR;

III.

Your signed statement certifying that "The funds drawn hereunder are being drawn as a result of *[Name of issuing bank]*'s failure to renew this letter of credit, and BellSouth Telecommunications, Inc. shall hold and apply such monies in accordance with its applicable contracts and tariffs."

Each draft must bear on its face the clause, "Drawn under Letter of Credit No. \_\_\_\_\_ dated \_\_\_\_\_ of *[Name of issuing bank]*."

In the event that you receive, prior to the expiration date herein set forth, any payment (from a source other than drafts drawn under this Letter of Credit) for invoices on the *[Account Party]*'s account and (i) within ninety (90) days after receipt of said payment a petition is filed by or against *[Account Party]* with a United States Bankruptcy Court; (ii) within ninety (90) days after receipt of said payment *[Account Party]* becomes the subject of an assignment for the benefit of creditors; or (iii) *[insert name of Account Party]* becomes the subject of any proceeding, voluntary or involuntary, which under applicable State or Federal law could result in the return of such payment(s), then the expiration date hereof shall automatically be extended to a date that is one hundred eighty (180) days after the date of such filing, assignment or proceeding and, if this letter of credit has previously expired, our obligations hereunder shall be reinstated up to the amount of such payment only, but in no event more than *[insert face amount]* in the aggregate.

This letter of credit shall renew automatically without amendment for successive one-year periods unless *[Name of issuing bank]* notifies the Applicant and Beneficiary, in writing by registered U.S. Mail at least sixty (60) days before the Expiration Date then in effect, that the term of this Letter of Credit shall not be extended further. *[Name of issuing bank]* shall cancel and terminate this letter of credit upon the receipt at the *[Name of issuing bank]* office located at the above address of a writing signed by both the Applicant and the Beneficiary stating "*[Name of issuing bank]* is instructed to immediately cancel *[Name of issuing bank]* Letter of Credit No. \_\_\_\_\_ dated \_\_\_\_\_, 200\_\_."

This Letter of Credit shall cover invoices issued or dated prior to, on or after the date hereof.

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the

"Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500."

We hereby agree with you that draft(s) drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation at the address set forth above on or before the expiration date specified herein (or as such expiration date may be extended pursuant to the provisions hereof).

Very truly yours,

*[Issuing Bank]*

By: \_\_\_\_\_  
Authorized Officer



SURETY BOND

Formatted: Level 1

KNOW ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_  
(hereinafter referred to as "Principal"), and \_\_\_\_\_ (hereinafter  
referred to as "Surety"), a corporation organized and existing under the laws of the State of  
\_\_\_\_\_, and duly authorized to conduct and carry on general surety business in the  
State of Georgia, are held and firmly bound unto BellSouth Telecommunications, Inc.  
(hereinafter referred to as "BellSouth"), a corporation organized and existing under the laws of  
the State of Georgia, as Obligee in full and just sum of \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_) (hereinafter referred to as the "penal amount"), lawful money of the United  
States of America, for the payment of which sum, well and truly to be made, Principal and Surety  
hereby bind themselves, their respective heirs, legal representatives, successors and assigns,  
jointly and severally, firmly by these presents.

WHEREAS, Principal has applied for, or contracted for, certain telecommunications  
services and/or facilities; and

WHEREAS, BellSouth has requested Principal to furnish security for the prompt  
payment of all amounts billed to Principal by BellSouth for itself or for others (hereinafter  
referred to as "said charges");

NOW THEREFORE, in consideration of the present forbearance by BellSouth to seek to  
compel Principal to make a cash deposit as a condition of furnishing such services and or  
facilities, and for other good and valuable consideration, the receipt and sufficiency of which are  
hereby acknowledged, the Principal and Surety agree as follows: that if Principal shall well and  
faithfully perform the obligations herein recited and shall promptly pay said charges, then this  
obligation shall be null and void; but otherwise, this obligation shall remain in full force and  
effect, and Surety herein agrees to pay said charges within thirty (30) days after written demand  
by BellSouth to Surety, which demand shall be made only after Principal has failed to pay said  
charges on or before the due date for said charges, and if payment is not made by Surety within  
said thirty (30) days, Surety further agrees to pay to BellSouth all of its costs for collection, legal  
expenses and attorneys' fees paid or incurred by BellSouth in collecting the penal amount or said  
charges.

This Bond is issued and executed subject to the following conditions:

1. That the term of this Bond shall be indefinite.
2. That Surety reserves the right to cancel this Bond by giving sixty (60) days prior written notice to BellSouth to the following address and position via certified mail, return receipt requested:

Attention: Business Credit Management  
1025 Lenox Park Blvd  
Room: 9D24  
Atlanta, GA 30319

and on the effective date of cancellation, Surety is discharged and released from further liability hereunder; it being understood and agreed, however, that Principal and Surety will be liable for up to the penal amount for any and all of said charges accruing up to the effective date of cancellation.

3. The liability of Surety for the penal amount shall be direct and primary, and BellSouth may collect the penal amount without proof that Principal is insolvent or unable to pay said charges.

4. An increase or decrease in the type, volume and charges for telecommunications services and/or facilities, either with or without Surety's knowledge, shall in no event affect the penal amount of this Bond or Surety's obligations under this Bond.

5. No extension, modification, or other alteration of payment terms or arrangements, either with or without Surety's knowledge, shall affect Surety's liability hereunder.

6. No claim by the Principal that amounts due to BellSouth for telecommunication services and/or facilities are in dispute, either in whole or in part, either with or without Surety's knowledge, shall effect Surety's obligations hereunder.

7. The posting of this Bond shall not affect the right of BellSouth to require any additional or increased security of Principal, or to exercise any remedy it may have under contract or its lawfully filed tariffs, and Surety hereby waives notice of any such additional or increased security or exercise of such remedy. A requirement of additional or increased security from Principal or exercise of any remedy against Principal under contract or BellSouth's lawfully filed tariffs shall in no event affect the penal amount of this Bond.

8. The laws of the State of Georgia shall govern the validity, construction, interpretation, and performance of this Agreement. The jurisdictional venue for any legal proceedings

involving this Agreement shall be held in any applicable local, state or federal court located within the State of Georgia.

9. Surety expressly waives the following:

(a) Notice of the acceptance of this Bond by BellSouth.

(b) Notice of the amount of indebtedness now existing or which may hereafter exist, from time to time.

(c) Notice of the type, volume and charges for the telecommunications services and/or facilities requested by Principal, and any increase or decrease of such charges.

(d) Notice of any payments, whether prepaid, timely paid, partially paid, or delinquent, any demand for payment, notice of default of nonpayment, presentment, protest, and notice of protest as to any obligation arising hereunder or any delay in billing or any extension of time for payment granted by BellSouth for said charges.

(e) All other notices to which the undersigned might otherwise be entitled in connection with this Bond or the indebtedness or obligation hereby guaranteed.

(f) The right, pursuant to O.C.G.A. § 10-7-24, to give notice to BellSouth at any time after the debt is due instructing BellSouth to first proceed to collect the debt from Principal.

10. There are no conditions or limitations to this Bond except those contained in writing herein at the date hereof, and thereafter no alteration, change or modification hereof shall be binding or effective unless executed in writing and signed by the undersigned.

IN WITNESS WHEREOF, Principal and Surety have duly executed or caused to be executed this Bond this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

PRINCIPAL

SURETY

Company: \_\_\_\_\_

Company: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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