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May 16, 2006

Beth O'Donnell
Executive Director
Kentucky Public Service Commission
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COMMISSION

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

Dear Ms. O'Donnell:

SouthEast Telephone, Inc. ("SouthEast") respectfully submits this letter in response to the letter filed on April 14, 2006 by Creighton E. Mershon, Sr., on behalf of BellSouth Telecommunications, Inc. ("BellSouth"). The Commission should reject BellSouth's erroneous arguments regarding the relationship between SouthEast's complaint against BellSouth and the recent U.S. District Court decision, *BellSouth Tel., Inc. v. Cinergy Comm's Co.*, Civil Action No. 3:05-CV-16-JMH, Memorandum Opinion and Order, (E.D. Ky. March 20, 2006) ("*Cinergy Decision*"). Contrary to BellSouth's contentions, nothing in the *Cinergy Decision* absolves BellSouth of its obligations to continue providing certain network elements and combinations of elements to SouthEast, under terms and conditions to be set by this Commission, pursuant to both (i) Section 271 of the Communications Act and (ii) the terms of BellSouth's interconnection agreement with SouthEast.

First, BellSouth ignores the distinction between its obligations under Section 251 and Section 271 of the Communications Act. The FCC's *Triennial Review Remand Order*, this Commission's March 10, 2005 orders, and the Court's *Cinergy Decision* vacating those orders, all concern BellSouth's obligations under *Section 251*. But none of these authorities says anything about BellSouth's continuing obligations under *Section 271*. To the contrary, the Court specifically made it clear that it was "not ruling on any issues presently before the PSC, for example whether BellSouth has additional unbundling requirements pursuant to § 271" *Cinergy Decision* at pp.27-28. Thus, the central question in the instant case – whether BellSouth

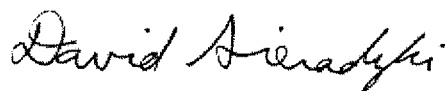
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has violated Section 271 by refusing to provide certain network elements and combinations to SouthEast – is unaffected by the Court's *Cinergy Decision*.

Moreover, in the *Cinergy Decision*, the Court in no way reversed or vacated its earlier holding affirming the validity of the “dispute resolution” provision of the BellSouth-SouthEast interconnection agreement, which obligates both parties “to carry on their respective obligations under the agreement while any dispute resolution is pending.” *BellSouth Tel., Inc. v. SouthEast Tel., Inc.*, Civil Action No. 3:04-CV-84-JH, Memorandum Opinion and Order (E.D. Ky., Sept. 16, 2005) (“*SouthEast Decision*”). BellSouth's characterization of the Court's holding on the *res judicata* issue in the *Cinergy Decision* is grossly misleading. SouthEast had asked the Court to rule that any decision in the *Cinergy* case should take into account the Court's earlier *SouthEast Decision*. The Court disagreed, and found that the *Cinergy* case presented factual and legal issues that were not identical to the earlier case involving SouthEast, which meant that that the Court was not precluded from considering BellSouth's new claims. *Cinergy Decision* at pp.14-15. This is a far cry from BellSouth's apparent position that the “dispute resolution” provision in the BellSouth-SouthEast interconnection agreement no longer applies.

In sum, the *Cinergy Decision* has little or no impact on SouthEast's claims in this case. The *Cinergy Decision* addresses the Commission's March 2005 orders regarding Section 251 elements, but says nothing about the key questions presented in this case – BellSouth's continuing Section 271 obligations and its obligations to SouthEast under the interconnection agreement. BellSouth overreaches when it claims that “there is no question” regarding SouthEast's claims in this case or that the relief requested by SouthEast “is unquestionably a violation” of the Court's ruling. BellSouth April 14, 2006 letter at 2, 3. To the contrary, the Commission clearly retains authority, on the record in this case, to put an end to BellSouth's illegal conduct.

Respectfully submitted,



David L. Sieradzki
Counsel for SouthEast Telephone, Inc.

cc: Creighton E. Mershon, Sr.
Amy Dougherty