

**Cheryl R. Winn**  
**Attorney At Law**

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July 18, 2006

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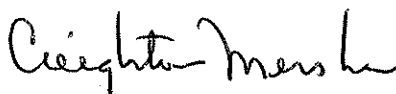
Ms. Beth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602

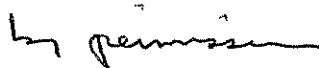
Re: Petition of SouthEast Telephone, Inc., for Arbitration of Certain Terms and  
Conditions of Proposed Agreement with BellSouth Telecommunications, Inc.  
Concerning Interconnection Under the Telecommunications Act of 1996  
PSC 2006-00316

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case are the original and ten (10) paper copies of the corrected version of BellSouth Telecommunications, Inc.'s Response to SouthEast Telephone Inc.'s Petition for Arbitration. BellSouth's original Response that was filed July 17, 2006, contained a typographical error on page 8 at ISSUE A-5. Attachment 2 referenced in that section should be Attachment 3. BellSouth apologizes for any inconvenience.

Very truly yours,

  
Cheryl R. Winn



Enclosures

cc: Parties of Record

641845

**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 ) Case No. 2006-00316  
BELLSOUTH TELECOMMUNICATIONS, INC. )  
CONCERNING INTERCONNECTION UNDER THE )  
TELECOMMUNICATIONS ACT OF 1996 )

**RESPONSE OF BELLSOUTH TELECOMMUNICATIONS, INC.  
TO PETITION FOR ARBITRATION OF SOUTHEAST TELEPHONE, INC.**

Pursuant to 47 U.S.C. § 252(b)(3), BellSouth Telecommunications, Inc. (“BellSouth”), responds to the Petition for Arbitration filed by SouthEast Telephone, LLC (“Southeast”) and shows as follows:

**INTRODUCTION**

Sections 251 and 252 of the Telecommunications Act of 1996 (“1996 Act”) encourage negotiations between parties to reach local interconnection agreements. Section 251(c)(1) of the 1996 Act requires incumbent local exchange companies (“ILECs”) to negotiate the particular terms and conditions of agreements to fulfill the duties described in Sections 251(b) and 251(c)(2-6).

Since passage of the 1996 Act on February 8, 1996, BellSouth has successfully conducted negotiations with a large number of competitive local exchange carriers (“CLECs”) in Kentucky. To date, the Kentucky Public Service Commission (“Commission”) has approved numerous agreements between BellSouth and CLECs. The nature and extent of these agreements vary depending on the individual needs of the companies, but the conclusion is

inescapable – BellSouth has a record of embracing competition and displaying willingness to compromise and interconnect on fair and reasonable terms.

As part of the negotiation process, the 1996 Act allows a party to petition a state commission for arbitration of unresolved issues.<sup>1</sup> The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.<sup>2</sup> The petitioning party must submit along with its petition “all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issue discussed and resolved by the parties.”<sup>3</sup> A non-petitioning party to a negotiation under this section may respond to the other party’s petition and provide such additional information as it wishes within 25 days after the Commission receives the petition.<sup>4</sup> The 1996 Act limits the Commission’s consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.<sup>5</sup>

BellSouth and SouthEast entered into an Interconnection Agreement (“Agreement”) that expired on October 8, 2004. The parties have been operating under that Agreement on a month-to-month basis since that time. The parties have been negotiating in an attempt to reach a new agreement, although BellSouth has negotiated in good faith, the parties have been unable to reach agreement on some issues. As a result, SouthEast filed its Petition for Arbitration.

Through the arbitration process, the Commission must resolve the unresolved issues ensuring that the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations

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<sup>1</sup> 47 U.S.C. § 252(b)(2).

<sup>2</sup> *See generally*, 47 U.S.C. §§ 252 (b)(2)(A) and 252 (b)(4).

<sup>3</sup> 47 U.S.C. § 252(b)(2).

<sup>4</sup> 47 U.S.C. § 252(b)(3).

<sup>5</sup> 47 U.S.C. § 252(b)(4).

contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, then form the basis for arbitration. Issues or topics not specifically related to these areas are outside the scope of an arbitration proceeding. Once the Commission has provided guidance on the unresolved issues, the parties must incorporate those resolutions into a final agreement to be submitted to the Commission for approval.<sup>6</sup>

In this Response, BellSouth addresses each of the nine issues SouthEast has presented in its Petition, and BellSouth presents a clear statement of BellSouth's position on these issues. BellSouth does not attempt to represent SouthEast's position on these issues.

### **SOUTHEAST'S INTRODUCTORY STATEMENTS**

#### **Parties**

BellSouth admits on information and belief that SouthEast is a Kentucky corporation with its principal place of business at the address set forth in the Petition, and that SouthEast is authorized to provide certain telecommunications services in the Commonwealth of Kentucky. SouthEast's allegations as to its legal status do not require a response.

BellSouth admits that it is a Georgia corporation with an office at the address set forth in the Petition. BellSouth also admits that E.C. Roberts, Jr. is BellSouth's President – Kentucky, and has an office at the address set forth by SouthEast. The various allegations regarding BellSouth's legal status do not require a response. BellSouth does not, however, deny that it must meet various requirements pursuant to the 1996 Act.

#### **Jurisdiction**

BellSouth admits that the Commission has jurisdiction pursuant to Section 252 of the 1996 Act to arbitrate the terms of the parties' interconnection agreement related to BellSouth's

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<sup>6</sup> 47 U.S.C. § 252(a).

obligations under Section 251. The Commission does not have the authority to arbitrate issues arising out of BellSouth's obligations under Section 271, however, and BellSouth specifically denies SouthEast's allegations to the contrary. BellSouth further denies that it has failed to negotiate in good faith. BellSouth admits that SouthEast has timely filed its Petition. Except as specifically admitted, BellSouth denies SouthEast's allegations regarding jurisdiction.

#### Negotiations

BellSouth denies that it has refused to negotiate in good faith. BellSouth has negotiated with SouthEast concerning a replacement Section 252 interconnection agreement, though SouthEast refused to identify for BellSouth certain areas of alleged disagreement until immediately before SouthEast filed its Petition. Such conduct by SouthEast amounts to a failure by SouthEast to negotiate in good faith. BellSouth has had separate, good faith negotiations with SouthEast regarding a separate agreement related to Section 271 services, which are not part of BellSouth's Section 251 obligations and thus not part of a Section 252 interconnection agreement.

#### Statement of Unresolved Issues

Section 252 of the 1996 Act requires a party that petitions a state commission for arbitration to set forth all unresolved issues and the position of each party with respect to each issue. There is no question that SouthEast has failed to do so in its attempt to import on a wholesale basis a multitude of issues in other proceedings into this arbitration. The Commission should, therefore, not include in its arbitration determination any issues other than the nine that SouthEast specifically delineates for arbitration in this matter. Indeed, several of the issues presented by SouthEast are beyond the jurisdiction of this Commission since they are beyond the scope of BellSouth's 251/252 obligations. Thus, these non-251/252 issues also must be excluded

from the Commission's consideration. To the extent that the Commission attempts to do so, however, BellSouth's positions on the referenced issues are set forth in detail in the other dockets that SouthEast references, and the Commission should, for the reasons explained in those dockets, adopt BellSouth's positions.

SouthEast attempts in its Petition to "reserve the right" to add additional arbitration issues at some unspecified later time. It may not legally do so. Section 252 makes clear that a party "shall at the same time as it submits the petition" identify all issues to be arbitrated. The Commission should not allow SouthEast the "right" to circumvent the Act's clear legal requirements.

#### **DISPUTED ISSUES AND POSITIONS OF THE PARTIES**

BellSouth hereby responds only to the nine issues that SouthEast has submitted to this Commission for arbitration. As set forth below, many of those issues are not subject to arbitration under Sections 251 and 252 of the 1996 Act because they purport to address obligations arising under Section 271, and not 251 and thus, are not appropriate for an arbitration ruling from this Commission. For certain issues, BellSouth has clarified the issue so that it is worded accurately and neutrally. In those cases, the revisions are noted in redline format. BellSouth will not comment upon SouthEast's position, since presumably SouthEast is entitled to present its positions as it deems appropriate. However, the Commission should disregard SouthEast's statements purporting to present BellSouth's positions regarding the issues in dispute. SouthEast has cast BellSouth's positions incorrectly in a number of instances, and has failed to fairly and fully present them in other cases. Rather than try to correct SouthEast's mistakes, BellSouth will simply restate its responses in a fashion intended to present its positions.

**ISSUE A-1: Should the starting point for the Parties' negotiations and arbitration of a new Interconnection Agreement be based on BellSouth's current standard Interconnection ~~revisions to their preexisting a~~ Agreement?**

**BellSouth's Position:** Yes. BellSouth maintains a "standard" Interconnection Agreement, which it updates on a regular basis, generally quarterly, to reflect changes in the law, as well as updated and/or improved processes and procedures. BellSouth utilizes the then current standard agreement as a starting point for negotiations with every CLEC. It makes no sense and would be grossly inefficient for BellSouth to be required to commence negotiations from a five year old agreement with SouthEast. First, the law has changed in several dramatic ways since the parties' 2001 agreement. BellSouth's standard reflects these changes already. In addition, a primary reason that BellSouth maintains and regularly updates its standard agreement is because it negotiates interconnection agreements with hundreds of CLECs. It would be unduly burdensome for BellSouth and unfair to the hundreds of other CLECs for BellSouth to be required to tailor its negotiations starting point with one CLEC when it has adopted a methodology for beginning negotiations that works well and is acceptable to the remainder of the CLEC community, including those that negotiate fervently on many, many issues.

**ISSUE A-2: What monthly recurring rates should be established in each pricing Zone for the voice-grade Local Loop element?**

**BellSouth's Position:** There is no need to "establish" loop rates. The Commission set forth cost-based loop rates in its UNE cost docket (Order in Administrative Case No. 382, dated December 18, 2001), and those rates are set forth in Attachment 2 of BellSouth's standard interconnection agreement, as well as in the agreements BellSouth has with every CLEC in Kentucky. Those same rates should be included in the parties' new agreement. SouthEast does not even purport to establish that

its proposed rates meet the UNE pricing standard set forth in the 1996 Act and outlined by the FCC's TELRIC rules. Indeed, it did not raise this issue or propose these rates until June 20, 2006, two days before it filed its Petition. Even if SouthEast's proposal were not patently unreasonable, which it is, its failure to raise this issue so that it could be negotiated in a meaningful way bars arbitration of the issue by the Commission, as SouthEast's conduct does not equate to good faith negotiations, which are a statutory prerequisite for arbitration.

**ISSUE A-3: What monthly recurring rate should be established for the "Port" component of the "Platform" combination of elements?**

**BellSouth's Position:** No port rate should be established. BellSouth is no longer required to provide a port as a UNE under Section 251. Consequently, the rates and terms related to BellSouth's provision of switching ports on a wholesale basis are not subject to Section 252 arbitration. State commissions do not have jurisdiction over services that BellSouth provides under Section 271.

**ISSUE A-4: What rates, terms and conditions should govern an interconnection arrangement in which BellSouth's offering of UNE-L interconnected to SouthEast's network at an "Adjacent Meet Point"?**

**BellSouth's Position:** It appears to BellSouth that SouthEast is confusing the purchase of an unbundled loop (UNE-L), which is used to serve a specific end user, with network interconnection, which the connection utilized by SouthEast to exchange its traffic with BellSouth. The arrangement that SouthEast purports to describe is not "an interconnection arrangement," because there would not be an exchange of traffic between the parties. Consequently, terms governing such an arrangement should not be included in the interconnection agreement.



**ISSUE A-5: What reciprocal compensation rates should apply to the transport and termination of local and ISP-bound traffic?**

**BellSouth's Position:** The rates that the Commission established in its UNE cost docket, which are set forth in Attachment 3 of BellSouth's standard interconnection agreement, as well as in the agreements BellSouth has with every CLEC in Kentucky. Those same rates should be included in the parties' new agreement. Moreover, SouthEast does not even purport to establish that its proposed rates meet the UNE pricing standard set forth in the 1996 Act and outlined by the FCC's TELRIC rules.

**ISSUE A-6: What rates should be established for the high-capacity transmission elements and other services and elements that are included in the preexisting BellSouth-SouthEast Interconnection Agreement?**

**BellSouth's Position:** For those high-capacity transmission elements that are still subject to the unbundling requirements of Section 251, which comprise the vast majority, the rates that the Commission established in its UNE cost docket should apply. Those are the rates in the parties' existing agreement, as well as in all of BellSouth's interconnection agreements in Kentucky. For those facilities which are no longer required to be unbundled pursuant to Section 251, the Commission need not, and indeed cannot, establish rates. The rates for any such facilities are set forth in BellSouth's wholesale tariff.

**ISSUE A-7: Should the standard rule of construction apply to this interconnection agreement, with any ambiguity in the terms of the agreement being construed against BellSouth?**

**BellSouth's Position:** No. It is not "standard" to construe a negotiated and/or arbitrated agreement against one party. The common law rule applies to contracts of adhesion, where one party has no ability to negotiate terms. That most certainly is not the case here. Not only does SouthEast have the right to negotiate, and has done so, it also

can seek and has sought arbitration of issues. There is no valid legal basis upon which to determine in advance that any ambiguity automatically should be construed against one of the parties to the negotiation and/or arbitration. If a dispute arises as to the meaning of a contract term, the court or regulatory agency charged with determining its meaning should apply standard rules of contract construction for negotiated agreements.

**ISSUE A-8: What rates, terms, and conditions should apply to the Parties' respective "Dispatched/No Trouble Found" charges?**


**BellSouth's Position:** SouthEast did not raise this issue during the statutory negotiation period. It instead raised it for the first time in its Petition. It is not, therefore, properly the subject of arbitration. However, BellSouth does not believe that the parties disagree on this issue with respect to loop and resale lines and expects that the parties will agree on contract terms and that SouthEast will remove this issue from the arbitration.

**ISSUE A-9: Must BellSouth provide data on the location and type of certain network facilities and the number of customer lines and geographic service area of such facilities? If so, at what rate?**

**BellSouth's Position:** No, BellSouth is not required to provide such information pursuant to Section 251. BellSouth will agree, however, to continue to make Remote Terminal information available to SouthEast Telephone at the rates, terms and conditions pursuant to which such information is currently provided to SouthEast. To the extent SouthEast desires additional information on the number of lines and information on those lines coming off BellSouth's main distribution frames ("MDFs") and central offices ("COs"), plus the E911 address and GPS coordinates associated with each remote terminal, MDF and CO, SouthEast should submit the request via the New Business Request process. It is not an appropriate issue for a Section 252 arbitration since there is no Section 251 obligation to provide such information.

WHEREFORE, BellSouth respectfully requests that the Commission enter an order in favor of BellSouth on each of the issues set forth herein, and grant BellSouth such other relief as the Commission deems just and proper.

Respectfully submitted,

  
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COUNSEL FOR BELLSOUTH  
TELECOMMUNICATIONS, INC.


641626

**CERTIFICATE OF SERVICE KPSC 2006-00316**

It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by mailing a copy thereof, this 18th day of July 2006.

Bethany Bowersock  
SouthEast Telephone, Inc.  
106 Power Drive  
P. O. Box 1001  
Pikeville, KY 41502-1001

Hon. David L. Sieradzki  
Hogan & Hartson, L.L.P.  
555 Thirteenth Street, N.W.  
Washington, DC 20004-1109

  
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Cheryl R. Winn  
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