

BellSouth Telecommunications, Inc.

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October 20, 2006

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

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OCT 20 2006

PUBLIC SERVICE
COMMISSION

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 are four (4) copies of BellSouth Telecommunications, Inc.'s Response in Opposition to SouthEast Telephone, Inc.'s Motion to Compel and for a Continuance. In accordance with the Commission's Procedural Schedule, the Response is emailed to SouthEast today.

Sincerely,


Mary K. Keyer

cc: Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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OCT 20 2006

PUBLIC SERVICE
COMMISSION

In the Matter of:

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)

Case No. 2006-00316

**BELSOUTH'S RESPONSE IN OPPOSITION TO
SOUTHEAST'S MOTION TO COMPEL AND FOR A CONTINUANCE**

BellSouth Telecommunications, Inc. ("BellSouth"), by and through its undersigned counsel, respectfully submits this response in opposition to the motion to compel filed by SouthEast Telephone, Inc. ("SouthEast").

SouthEast is asking the Commission to order BellSouth to produce a literal truckload of irrelevant information in response to hundreds of separate requests on issues that were previously considered and decided by this Commission after its exhaustive review in Administrative Case 382. SouthEast is also asking to delay this proceeding indefinitely. The Commission should deny both requests. SouthEast's attempt to turn this two-party arbitration into a cost docket is unprecedented and unwarranted. No Commission in the BellSouth region has permitted a CLEC to arbitrate cost issues in a two-party arbitration. And there is no legitimate reason for this Commission to do so here. The Commission has already established cost-based UNE rates for UNE Zones established by the Commission in its generic cost proceeding. Every CLEC in Kentucky pays those TELRIC UNE rates set by this Commission. There has been no showing (nor even a credible allegation) that those rates are inappropriate and that SouthEast is entitled to

special rates. SouthEast has been paying these same UNE rates since October 2001 all the while continuing to grow its business.¹

Through its prior experience in the UNE cost docket, this Commission understands the magnitude of resources required in establishing UNE rates. SouthEast through its data requests is essentially attempting to re-create the work that this Commission spent years reviewing filings by multiple parties and thousands of pages of data and testimony to establish UNE rates and associated UNE Zones. The federal timelines for completing arbitration do not permit for such an exhaustive review.

Two major areas of inquiry in SouthEast's discovery, and which encompass multiple data requests, are the issues of UNE loop rates and section 271 switching rates. With respect to UNE loop rates, SouthEast would like lower rates for *analog* loops and asserts that the fact that this Commission, like its sister commissions in the other eight states in which BellSouth operates as an ILEC, established UNE rates for all CLECs in a generic cost proceeding, is of no import here. SouthEast offers no support for its conclusory allegation that forward looking loop costs have in fact changed in some material fashion that would justify a detailed cost proceeding. It does not state what technological or marketplace changes supposedly have altered the forward looking costs of local loops. Nor does it provide evidence that the cost of copper wire and/or the materials that comprise the loop or that the labor costs associated with building local loops have decreased. In fact, the labor costs, which are a primary cost of loops, continue to increase year-to-year.

¹ The publicly filed line data information for SouthEast from the PSC web site is: 10,253 lines in 2003, 17,612 lines in 2004, and 32,336 lines in 2005. http://psc.ky.gov/utility_master/mastersearch.aspx

Every State commission in BellSouth's nine-state region established cost-based UNE loop rates in the same general timeframe that this Commission did. All of those rates continue to be in effect today. SouthEast's unsupported one sentence allegation that the forward looking costs of loops have decreased is not a valid basis for this Commission to take the unprecedented approach of allowing this sole CLEC to conduct a cost proceeding where there is already a cost-based rate in place and contained in every BellSouth interconnection agreement in Kentucky. BellSouth asks that the Commission make that point clear and thus moot the scores of SouthEast data requests seeking loop cost information.

The other issue to which SouthEast directs much of its discovery is section 271 switching. BellSouth has consistently taken the position that state commissions do not have jurisdiction over section 271 elements. That issue is before the Commission in the change of law docket and in the appeal of the Commission's decision in the SouthEast complaint docket 2005-00533 before the United States District Court for the Eastern District of Kentucky. This issue has been briefed extensively in those cases. BellSouth will not repeat all of the reasons here why section 271 elements are not required to be included in section 251 agreements, but refers the Commission to its filings in these two dockets. The overwhelming majority of State commissions, and four U.S. districts courts, that have addressed this issue nationwide have confirmed BellSouth's position. Consequently, BellSouth does not have a single interconnection agreement that includes section 271 switching elements. SouthEast is not entitled to special treatment in Kentucky.

Granting SouthEast's request would not only be unfair, it would be unlawful and would allow SouthEast to operate over a framework pursuant to which no other CLEC in the industry operates. No CLEC in Kentucky (or elsewhere in the BellSouth region) has section 271

switching elements included within its section 252 interconnection agreement, which is what SouthEast is seeking. Southeast's multitude of data requests with regard to UNE loop costs and section 271 switching are inappropriate and the Commission should uphold BellSouth's objections to them.

The facts herein simply do not warrant the unprecedented relief and delay that SouthEast seeks. SouthEast would like to continue operating under its long-ago expired interconnection agreement for as long as possible. SouthEast's "current" interconnection agreement with BellSouth expired more than two years ago, in October 2004. Pursuant to the terms of that agreement, the parties continue to operate under the contract until a new agreement is reached. Notably, however, although several BellSouth interconnection agreements contained a similar roll-over provision, SouthEast has the oldest BellSouth interconnection agreement in Kentucky that has not been converted to a new agreement or arbitrated. SouthEast thus continues to enjoy the advantages of the pre-Triennial Review Order regime, including, most notably, continued serving of its pre-March 2005 embedded base of customers with the now outlawed UNE-P, notwithstanding the fact that BellSouth is no longer required to make UNE-P available. This is unfair particularly for other CLECs that have abided by the law. The Commission should not allow SouthEast's needless discovery dispute to further delay this arbitration and resulting new interconnection agreement between the parties. It is clear, despite SouthEast's maneuvering, that that is precisely what SouthEast is attempting to do. After a preliminary conference with Commission Staff, BellSouth sought to reach agreement with SouthEast on an appropriate scheduling order to govern this proceeding. In the course of those discussions, and after several inquiries from BellSouth, SouthEast never stated or in any way indicated the substance or the

voluminous nature of the discovery it planned. If it had, BellSouth would have raised the issue with the Commission then and attempted to resolve the issue without further delay.

Next, on the deadline for serving discovery, SouthEast served what it numbered as 49 data requests. These so-called 49 requests in fact contain hundreds of separate requests. For example, SouthEast's first request asks for certain cost information for *every* analog loop type in *each* wire center in Kentucky. Most of SouthEast's alleged 49 requests likewise contain multiple sub-parts, thus totaling hundreds of separate requests.

BellSouth timely served its responses and objections to SouthEast's discovery on September 29, 2006. SouthEast followed up with BellSouth the following week and asked for certain data that BellSouth had disclosed to be provided in a different format, and BellSouth sent that additional information to SouthEast immediately. More than two weeks after BellSouth filed its responses and objections, on October 17, 2006, the week before direct testimony is due to be filed, SouthEast filed its short motion to compel and for a continuance.

There is nothing in SouthEast's motion that warrants the extraordinary relief that SouthEast seeks. SouthEast's "[d]etailed justifications for each of SouthEast's unanswered Data Requests" referenced in its motion are merely restatements of the issue or statements that the information is relevant. For example, below Data Request No. 1, which seeks loop cost information, SouthEast says: "Issue A-2 concerns the appropriate rate for each pricing zone. This information is directly relevant to SouthEast's ability to propose appropriate zones and rates within those zones, to the extent that the existing cost study results are retained." Another "detailed justification" that SouthEast provides for several of its data requests is to state that "SouthEast needs this information to address issue [X]." Restating an issue and summarily stating that the information you seek is relevant or that you need it is not a "detailed

justification” for which the Commission should compel discovery of inappropriate cost docket information in a two-party arbitration. SouthEast only addressed the loop costs and 271 switching issues in the context of its motion and relies solely on its “detailed justifications” with respect to the few other requests it made of BellSouth. BellSouth set forth in its objections filed September 29, 2006, the reasons why SouthEast’s requests are not appropriate and BellSouth incorporates those objections herein by reference. There is nothing in SouthEast’s “detailed justifications” that warrant the Commission overruling any of BellSouth’s well-founded objections.

BellSouth is committed to moving forward with arbitration of appropriate section 252 issues on the timetable to which the parties agreed and the Commission ordered. Doing so will ensure that SouthEast will have an interconnection agreement that is compliant with current law. BellSouth asks that, for the reasons set forth above, the Commission deny SouthEast’s motion to compel and for a continuance in its entirety.

Respectfully submitted,



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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 via email this 20th day of October 2006.

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