

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

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**PUBLIC SERVICE
COMMISSION**

In the Matter of)
)
Petition of SouthEast Telephone, Inc. for Arbitration of) Case No. 2006-00316
Certain Terms and Conditions of Proposed Agreement)
with BellSouth Telecommunications, Inc. Concerning)
Interconnection Under the Telecommunications Act of)
1996)

PETITION FOR CONFIDENTIAL TREATMENT

SouthEast Telephone, Inc. ("SouthEast"), pursuant to 807 KAR 5:001 § 7, respectfully request that the Commission grant confidential treatment of the confidential version of the Affidavit of Charles E. Richardson III, General Counsel and Vice President of Momentum Telecom, Inc. ("Momentum"), which was filed as an attachment to SouthEast's May 1, 2007, Opposition to AT&T Kentucky's Motion for Reconsideration and/or Rehearing.

The Kentucky Open Records Act, KRS 61.878(1)(c), exempts from disclosure certain commercial information that, if disclosed, would permit an unfair advantage to competitors of the party seeking confidentiality. The confidential version of Mr. Richardson's Affidavit includes information relating to an arrangement that BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky") refers to as a so-called "commercial agreement." To the extent that AT&T Kentucky may take the position that disclosure of such information would have any advantageous or disadvantageous impact on competitors, and in an abundance of caution, SouthEast respectfully requests confidential treatment.

Respectfully submitted,

/s/

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Counsel for SouthEast Telephone, Inc.

May 2, 2007

Certificate of Service

It is hereby certified that a true and correct copy of the foregoing was served on the following individual via e-mail, this 2nd day of May 2007:

Mary K. Keyer
BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky
601 W. Chestnut St., Room 407
Louisville, KY 40203
Mary.Keyer@BellSouth.com

/s/

David L. Sieradzki

PUBLIC VERSION

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AFFIDAVIT

STATE OF ALABAMA
SHELBY COUNTY

Comes now Charles E. Richardson III, General Counsel and Vice President of Momentum Telecom, Inc. ("Momentum"), and being first duly sworn, does depose and say as follows:

1. I serve Momentum, a competitive local exchange carrier ("CLEC") operating in the state of Kentucky, as its General Counsel and Vice President and have done so during all relevant periods covered by the matters raised in this Affidavit. Momentum has been providing service in the state of Kentucky since December 16, 2001. Its customers are overwhelmingly residential consumers, many located in small towns and rural areas throughout the state.

2. I execute this affidavit in response to the representation by BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky ("AT&T Kentucky" or "AT&T") that its "commercial agreements" are evidence that its local switching rates are just and reasonable, to-wit: **[Begin Confidential]**

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[End Confidential]

3. As a threshold point, the mere existence of these agreements provides no evidence as to whether the rates themselves are just and reasonable. A firm with market power – which AT&T undeniably enjoys in Kentucky -- has the ability to charge rates that provide economic rents. Indeed, the entire purpose of rate regulation is to prevent a firm with market power from charging rates that are unreasonably high. The Commission cannot determine whether the rates are just and reasonable merely by observing the existence of commercial agreements² but must consider other indicia such as (at a minimum) the relationship of the price to cost and the effect of the price on the pattern of competition. The Commission should also consider the circumstances confronting CLECs that signed AT&T Kentucky's commercial agreements, including their motivation and alternatives.

4. Momentum is presumably one of the CLECs referred to by AT&T Kentucky, in that it currently operates in Kentucky under a March 2007 commercial agreement, which replaced a March 2006 commercial agreement, which, in turn, replaced an expired interconnection agreement.³ Despite repeated requests, AT&T Kentucky categorically refused to negotiate the rates it unilaterally incorporated in the two commercial agreements. AT&T Kentucky's negotiating posture in connection with its commercial agreements was—and has always been—“take it or leave it” with respect to all rates. AT&T Kentucky explained its refusal to negotiate with Momentum using the same argument offered in its Motion: [Begin Confidential]

¹ See Motion for Reconsideration and/or Rehearing of BellSouth Telecommunications, Inc.,(d/b/a AT&T Kentucky), Case No. 2006-00316, at 6-7 (filed April 20, 2007) (“AT&T Kentucky Motion”).

² The Commission should view the term “commercial agreement” with the same skepticism Voltaire used to describe the Holy Roman Empire – “As neither Holy, nor Roman, nor an Empire.” AT&T Kentucky's commercial agreements are neither commercial nor agreements as the term is commonly used to denote a meeting of the minds between two parties negotiating from equal bargaining positions.

³ The expired interconnection agreement is the subject of an arbitration pending before this Commission (Case No. 2006-00058).

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[End Confidential]

5. AT&T Kentucky's reasoning is a perfect tautology: AT&T's rates are just and reasonable because other CLECs have agreed to them, and because other CLECs have agreed to them, the rates must be just and reasonable. Consequently, *any* commercial agreement signed by *any* CLEC for *any* purpose, *i.e.* exiting the market, or under duress, or for services other than loops, transport or switching, becomes, in AT&T Kentucky's world, *ipso facto* evidence of just and reasonable rates. The Commission should not forget that, just one year ago, BellSouth would point to its "agreement" with AT&T as evidence of just and reasonable rates, only later to concede that AT&T was exiting and, therefore, uninterested in serving the mass market.

6. In reality, Momentum's commercial agreements with AT&T Kentucky are evidence of unjust and unreasonable rate levels, accelerating Momentum's exit from the Kentucky residential market. At the time of the FCC's *Triennial Review Remand Order*,⁵ Momentum served approximately [Begin Confidential] [End Confidential] Kentucky telephone consumers. Under AT&T Kentucky's commercial agreements, Momentum's line count now stands at just under [Begin Confidential] [End Confidential], which represents a decrease of almost [Begin Confidential] [End Confidential] over two years. Momentum has suffered this substantial decline despite its every effort to find alternatives to AT&T Kentucky-provided local switching. With no alternative provider to AT&T Kentucky, Momentum has been forced to pursue legal redress for AT&T's failure to offer just and reasonable rates.⁶

⁴ [Begin Confidential]

[End Confidential]

⁵ *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* WC Docket Nos. 04-313, 01-338, Order on Remand, 20 FCC Rcd 2533 (2005) ("*Triennial Review Remand Order*"), *affirmed Covad Communications v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

⁶ Momentum, through CompSouth, has participated in this Commission's change of law docket. *Petition of BellSouth Telecommunications to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law* (Case No. 2004-00427). Momentum's efforts are not limited to Kentucky and include arbitrations, change of law dockets and appeals in other AT&T/BellSouth states.

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7. AT&T Kentucky's theory that the mere existence of commercial agreements demonstrates just and reasonable rates is flawed both theoretically and practically. Certainly, Momentum's signing of a commercial agreement with AT&T Kentucky is not evidence of a just and reasonable rate – it evidences only a lack of alternatives and monopoly pricing. In the absence of just and reasonable prices for AT&T Kentucky's elements, Momentum has ceased sales and marketing efforts in Kentucky.⁷ It must hope for relief before its normal "churn" drives it out of business and further solidifies AT&T Kentucky's market dominance. Absent regulatory relief, AT&T Kentucky's "arms-length" agreement turns out to be a thinly disguised "strong-arm" tactic.


Charles E. Richardson III 

ACKNOWLEDGEMENT

State of Alabama
Shelby County

I, Teri M. Hennington, a notary public in and for Shelby County, State of Alabama, do hereby certify that Charles E. Richardson III, who is personally known by me, appeared before me and, after being first duly sworn, did make the statements that appear in the above affidavit and did sign the same.

on May 1, 2007



Teri M. Hennington
Notary Public

My commission expires the 23 day of
April, 2011 [SEAL]

⁷ Momentum cannot even accept new customers in Zone 3 because AT&T Kentucky's unreasonably high local switching rate causes its wholesale rates for residential customers in Zone 3 to rise above higher AT&T Kentucky retail rates for customers in Zone 3, thus creating a price squeeze and effectively prohibiting Momentum from offering service to those customers.