



STOLL · KEENON · OGDEN
PLLC

2000 PNC Plaza
500 West Jefferson
Louisville, KY 40202
(502) 333-6000
Fax: (502) 333-6099
www.skofirm.com

DEBORAH T. EVERSOLE
502-568-5770
deborah.eversole@skofirm.com

January 25, 2008

RECEIVED

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**PUBLIC SERVICE
COMMISSION**

Ms. Elizabeth O'Donnell
Executive Director
Public Service Commission
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
KPSC 2006-00316***

Dear Ms. O'Donnell:

Please find enclosed an original and ten copies of Southeast Telephone Inc.'s Response to AT&T Kentucky Filing, Motion to Incorporate, and Motion to Enforce.

Please acknowledge receipt of this application by placing your file-stamp on the extra copy and returning to me via our runner.

Very truly yours,

STOLL KEENON OGDEN PLLC

Deborah T. Eversole

Enclosure

cc: Parties of Record

101164.117856/507517.1

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.
BELLSOUTH TELECOMMUNICATIONS, INC.)	2006-00316
CONCERNING INTERCONNECTION UNDER THE)	
TELECOMMUNICATIONS ACT OF 1996)	

**SOUTHEAST TELEPHONE INC.'S RESPONSE TO
AT&T KENTUCKY FILING, MOTION TO
INCORPORATE, AND MOTION TO ENFORCE**

SouthEast Telephone Inc. ("SouthEast"), respectfully submits this Response to AT&T Kentucky's filing of November 15, 2007. This document also includes SouthEast's Motion to Incorporate into the parties' Interconnection Agreement certain key decisions reached by the Commission in its recently issued Final Order in Case No. 2004-00427,¹ and its Motion to Enforce the Commission decisions in this arbitration proceeding with regard to AT&T Kentucky's obligations to provide adjacent meet-point interconnection and to furnish nondiscriminatory access to information concerning its network infrastructure necessary for such collocation. In support whereof, SouthEast states as follows:

INTRODUCTION AND SUMMARY

The Commission should reject AT&T Kentucky's request to set aside the resolution of Issue A-3 (the just and reasonable pricing of the local switching- related elements) in the March 28, 2007 arbitration order ("*March 28 Order*").² AT&T Kentucky has provided nothing to

¹ *Petition of BellSouth Telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*, Case No. 2004-00429, Final Order dated Dec. 12, 2007) ("*Change of Law Order*"), *reconsideration denied* (Jan. 18, 2008).

² *Petition of SouthEast Telephone, Inc. for Arbitration of Certain Terms and Conditions of Propowsed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection Under the Telecommunications Act of 1996*,

contradict the Commission's substantive factual determinations as to Issue A-3. To be sure, the District Court order attached to AT&T Kentucky's letter, regarding the Commission's jurisdiction to enforce Section 271, may justify continuing to hold in abeyance this portion of the March 28 Order. But the District Court decision is not the last word on the subject. First, the District Court order is not yet final and is still subject to potential appeal. Second, the Federal Communications Commission ("FCC") may be in a position to rule on the just and reasonable rates for AT&T Kentucky's Section 271 competitive checklist elements in the near future. This Commission's ruling and factual determinations on Issue A-3 should help the FCC build on the record built by this Commission. And third, as the Commission correctly concluded in the *Change of Law Order*, the Commission has authority to affirm its conclusions in Issue A-3 pursuant to state law and 47 U.S.C. § 252.³

Moreover, the Commission should require that its determinations in the *Change of Law Order* proceeding regarding service quality standards and enforcement mechanisms, commingling, line conditioning, and line sharing, be incorporated into the Interconnection Agreement between AT&T Kentucky and SouthEast. Throughout the course of this proceeding, SouthEast has consistently made clear that the open issues in the *Change of Law* proceeding, once resolved, should be incorporated into this proceeding and into the interconnection agreement.⁴ Now the Commission has resolved those issues. They should be incorporated into this case.

Case No. 2006-00316 Order (March 28, 2007); *petition for reconsideration and rehearing granted in part and denied in part* (May 10, 2007). This filing responds to Commission Staff's invitation, during the informal conference held at the Commission's offices on December 19, 2007, to file a written response to AT&T Kentucky's filing herein on November 15, 2007. See Informal Conference Memorandum dated December 21, 2007, and filed in Case Nos. 2005-00519, *BellSouth Telecommunications, Inc.'s Notice of Intent to Disconnect SouthEast Telephone, Inc. for Nonpayment*, and Case No. 2005-00533, *SouthEast Telephone, Inc. v. BellSouth Telecommunications, Inc.*

³ See *Change of Law Order* at 5-12.

⁴ See, e.g., SouthEast Petition for Arbitration, Case No. 2006-00316, at 5-6 (filed June 22, 2006); SouthEast Post-Hearing Brief, Case No. 2006-00316, at 10 n.24 (filed Feb. 23, 2007).

Finally, AT&T Kentucky has thus far failed to comply with the Commission's March 28, 2007 arbitration order, particularly with respect to Issue A-4 (adjacent meet-point interconnection) and Issue A-9 (data regarding the locations of remote terminal and subtending customers). AT&T Kentucky has not executed a final interconnection agreement with SouthEast and has not provided the services and functionalities that the Commission ordered almost a year ago. SouthEast moves that the Commission issue an order requiring AT&T Kentucky to execute a conforming interconnection agreement with SouthEast and to comply immediately with its obligation to furnish ordering and pre-ordering information to SouthEast, including the existence, type, and location of any electronic or other equipment on the loop, including remote concentration devices and feeder/distribution devices, that is at a minimum no less favorable than the terms and conditions under which AT&T Kentucky provides that information to itself.

ARGUMENT

I. THE COMMISSION SHOULD REJECT AT&T KENTUCKY'S REQUEST TO SET ASIDE THE ARBITRATED RULING ON JUST AND REASONABLE LOCAL SWITCHING RATES (ISSUE A-3).

The Commission should reject AT&T Kentucky's unsupported proposal to set aside its decision on Issue A-3 for several reasons.

First, AT&T Kentucky seems to imply that the District Court's decision on the Commission's Section 271 jurisdiction in *BellSouth Telecommunications, Inc. v. Kentucky Public Service Commission*, C.A. 06-65-KKC (E.D. Ky., Sept. 18, 2007) (the "District Court Order") is final. It is not. Instead, the Court retained jurisdiction, holding in abeyance SouthEast's counterclaim that AT&T Kentucky has violated its statutory obligation to provide Section 271 elements to SouthEast at just and reasonable rates "until the FCC has had an opportunity to consider it" [District Court Order, Slip Op. at 24]. The District Court has never issued a final judgment in the case, and it is still possible that an appeal will be taken to the Sixth

Circuit and that the Court's decision will be reversed in whole or in part. In the meantime, it is proper that the rate set for switching in this case remain in abeyance.

In addition, the Commission should reject AT&T Kentucky's request to set aside its resolution of Issue A-3, because the Commission's ruling is relevant to potential upcoming proceedings before the FCC regarding the "just and reasonable" rate for AT&T Kentucky's the local switching element (item #5 on the Section 271 competitive checklist). This Commission has compiled a complete evidentiary record justifying its determination on the "just and reasonable" switching rate, and that record may be highly informative to the FCC. Indeed, in the context of ascertaining BOC compliance with checklist requirements in Section 271 applications, the FCC has indicated that it will not "conduct a *de novo* review of the state commissions' pricing determinations" where, as in this arbitration case, the PSC was "able to cross examine witnesses" and "resolve factually complex issues."⁵ See also 47 U.S.C. § 271(d)(2)(B) (providing for FCC consultation with the State commission). As SouthEast explained in the December 19 Informal Conference, it has begun the process necessary to file an FCC complaint against AT&T Kentucky pursuant to 47 U.S.C. § 271(d)(6) on that same claim. When the FCC reaches a decision as to the proper switching rate (or after AT&T Kentucky negotiates a reasonable rate, whichever comes first), the Commission should, in this docket, approve the Interconnection Agreement that incorporates that rate, pursuant to the Commission's authority under Section 252 of the Act and state law.

Moreover, the Commission should decline to set aside its decision on Issue A-3 because the Commission has jurisdiction to address this issue under state law and other sources of authority that were not addressed by the District Court. The Commission has addressed these

⁵ *Joint Application by BellSouth Corp., et al., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, 17 FCC Rcd 17595, ¶ 30 (2003) ("Kentucky 271 Order")

sources of authority at greater length in the *Change of Law Order*. In this case, the Commission should keep in place its determination as to the just and reasonable switching rate pursuant to its “general authority and jurisdiction over intrastate facilities used to provide intrastate service” [*Change of Law Order* at 7] and its obligation to review agreements filed under Section 252, including agreements concerning Section 271 elements, to determine whether “implementation of the agreement or a portion of the agreement is not consistent with the public interest, convenience, or necessity.” *Id.* at 8.

Finally, as discussed in the following sections, the docket should remain open because (i) the parties have not, to date, finalized their interconnection agreement; (ii) this docket and the interconnection agreement must incorporate issues decided in Case No. 2004-00427 as discussed below; and (iii) AT&T Kentucky remains recalcitrant with regard to its duties to implement adjacent meet-point interconnection and to furnish infrastructure information necessary to enable SouthEast to interconnect and to build out its system in remote rural areas, as established in the March 28, 2007 Arbitration Order.

II. THE COMMISSION SHOULD ORDER THAT ITS DECISIONS IN CASE NO. 2004-00427 BE EXPLICITLY INCORPORATED INTO THE PARTIES’ INTERCONNECTION AGREEMENT.

On December 12, 2007, the Commission entered its Order in Case No. 2004-00427, holding, among other things, that -- as SouthEast had urged in its Petition requesting arbitration, at 3-4 -- an Interconnection Agreement approved by the Commission pursuant to Section 252 of the Act must include *all* elements and services required under Sections 251, 252, and 271 of the Act and other provisions of law [*Change of Law Order* at 8-9 & n.12, citing *Qwest Corp. v. Public Utilities Commission of Colorado*, 479 F.3d 1184 (10th Cir. 2007)].

The importance of including all terms and conditions governing the interconnection of an ILEC and CLEC into a single agreement enforced by the Commission cannot be overstated. The absence of service quality enforcement mechanisms in AT&T Kentucky's allegedly "commercial" agreement is of tremendous concern to SouthEast and, indeed, to all CLECs, for obvious reasons. A failure by AT&T Kentucky to provide adequate service to a CLEC results not only in substandard service to Kentucky customers served by that CLEC; inadequate service provided by AT&T Kentucky to a CLEC could, ironically, effectively destroy the *CLEC's* business and return those customers to AT&T Kentucky. Thus, *all* elements and services obtained by CLECs must appear in a Section 252 agreement that is immediately enforceable, not only because it is the law, but because it is also a matter of intense practical importance.

The Commission also decided a number of additional, and crucial, matters in Case No. 2004-00427, including the following, which should be incorporated into SouthEast's Section 252 Interconnection Agreement with AT&T Kentucky:

- ✓ Inclusion of services and elements, including Section 271 elements, in AT&T Kentucky's Service Quality Measurement Plan (Case No. 2004-00427 Issues 13, 15, 16, 29, and 31);
- ✓ Commingling, including the ability to commingle any loop with Section 271 switching (Case No. 2004-00427 Issue 14);
- ✓ Line conditioning at TELRIC rates regardless of the length of the loop (Case No. 2004-00427 Issues 26 and 27);
- ✓ Line Sharing on a non-discriminatory basis (Case No. 2004-00427 Issues 17 and 18).

The Commission should issue its Order explicitly incorporating into this docket its holdings on these issues and directing the parties to conform the language of their interconnection agreement to those holdings, as SouthEast requested in its June 15, 2006 Petition in this case. As a matter of law, those issues were at stake in this arbitration proceeding as well

as in Case No. 2004-00427, and should be incorporated into the parties' interconnection agreement at issue in this case without any need for further hearings, evidence, or argument.

The propriety of incorporating these decisions into this case and into the interconnection agreement between AT&T Kentucky and SouthEast cannot reasonably be questioned. At the time the Petition in this case was filed, the Commission's Order in Case No. 2004-00427 was pending. Both SouthEast and AT&T Kentucky were parties to that case, which addressed numerous crucial disputes between AT&T Kentucky and competing local exchange carriers in general. In order to avoid duplicating briefs and arguments in more than one docket, SouthEast, in its Petition in this matter, at 5, incorporated by reference in this case the issues to be resolved in Case No. 2004-00427. As the parties' Interconnection Agreement has not yet been finalized, the Commission should enter its Order requiring the parties' final Agreement to incorporate the decisions reached by the Commission in Case No. 2004-00427 as described herein. That single agreement must then be publicly filed with the Commission pursuant to Section 252 of the Telecommunications Act and enforced by this Commission. Moreover, once the just and reasonable rate for the switching element is established, the Interconnection Agreement should be further revised to incorporate those rates and should be filed with the Commission.

III. THE COMMISSION SHOULD ENFORCE ITS PREVIOUS DECISIONS AND REQUIRE AT&T KENTUCKY TO ADOPT CONTRACT LANGUAGE THAT WILL IMPLEMENT THE ORDER.

Finally, SouthEast asks that the Commission direct AT&T Kentucky to comply with its duty, established in the Commission's March 28, 2007 Order in this case, to provide for adjacent collocation at any technical feasible point in its network unfettered by artificial and unlawful limitations (Issue A-4) by providing the infrastructure information that AT&T Kentucky *provides to itself* so that SouthEast can obtain access to the elements it needs to collocate its

facilities (Issue A-9). SouthEast provides as an attachment hereto specific contract language to effectuate these requirements, and requests that the Commission order AT&T Kentucky to execute an Interconnection Agreement incorporating this language at once. Such an enforcement Order is needed to end AT&T Kentucky's apparent determination to continue placing artificial barriers in SouthEast's path to establishing the interconnection arrangements to which it is entitled, and obtaining the network information it needs in complete and usable form.

The Commission unequivocally concluded in its March 28 Order that SouthEast is entitled to the same pre-ordering and ordering infrastructure information AT&T Kentucky provides to itself, noting, in its March 28 Order, at 14, that "Contrary to AT&T Kentucky's contention, § 251 of the Telecom Act and subsequent FCC rules clearly contemplate ILECs making available the type of information sought by SouthEast in this arbitration proceeding." Nevertheless, AT&T Kentucky continues to avoid its obligation to provide this crucial information on nondiscriminatory terms. As a result, negotiations for language to implement this obligation are at an impasse, and SouthEast's plans to build out its network are necessarily on hold. AT&T Kentucky's contract negotiators continue to insist that the only maps showing locations of remote terminals that AT&T Kentucky will provide to SouthEast will be redacted of "confidential" information, *even though* SouthEast signs a nondisclosure agreement. Insofar as such "redacted" information concerns network characteristics relevant to SouthEast's need to collocate its equipment -- and it almost certainly does -- the information falls within the scope of the Commission's Order.

AT&T Kentucky not only refuses to provide maps and plats that include all necessary information pursuant to a single, easily-referenced source - maps and plats that it certainly puts into the hands of its own field personnel and contractors that work for AT&T Kentucky -- it

attempts to explain away its failure to do so by claiming that the information is available elsewhere – on the Loop Make Up (“LMU”), for example. But, as AT&T Kentucky is well aware, a diligent researcher for SouthEast *still* would not, even after hours of data mining various sources, have all the information necessary to interconnect.

The following is a description of only some of the practical difficulties and information gaps that result from AT&T Kentucky’s lack of disclosure. The LMU touted by AT&T Kentucky as a source of information not provided on its exorbitantly-priced CDs, for example, does *refer* to pedestals and cross boxes (essential equipment in the remote rural areas in which SouthEast operates); however, the LMU provides no *addresses* for these pedestals and cross boxes. Driving untold miles over rural roads to hunt these facilities is not feasible; and even if it were, simply finding the facilities would not provide other information needed, such as the CLLI codes associated with them, whether they have copper or fiber feed, the serving area of each; etc. Next, the AT&T CD does not provide for a remote terminal a Master Street Address Guide (“MSAG”) valid 911 address. Next, rather than valid MSAG names, AT&T gives pole number and street name – but fails to provide any mapping showing pole numbers, or showing whether the pole in question is metal or wood. SouthEast demonstrated these problems in this case over a year ago,⁶ and the Commission agreed that AT&T Kentucky must provide the requested data [March 28 Order at 15].

Since the issuance of the March 28 Order, SouthEast has repeatedly attempted to obtain the necessary information from AT&T Kentucky. However, it has become painfully clear AT&T Kentucky is prepared to send SouthEast on a scavenger hunt each and every time it asks to interconnect in remote rural areas. The Commission should order that the game cease.

⁶ See Direct Testimony of James Keller at 2-3 (filed Nov. 3, 2006), Oral Testimony of James Keller, Transcript of Evidence at 34-58 (Date of Hearing: Jan. 9, 2007).

The Commission already explained in its March 18 Order that provision of such limited information is not sufficient under the Telecom Act and FCC rules. Network elements, including pre-ordering and ordering information, must be provided on terms that are, “at a minimum, no less favorable than the terms and conditions under which the ILEC provides such elements *to itself*.” [March 18 Order at 14, *citing* 47 C.F.R. § 51.313(b) (emphasis added)]. In short, AT&T Kentucky may deny to SouthEast plats, maps and documents showing the information below only if AT&T Kentucky does not furnish to *its own* personnel documents showing information such as the following:

- ✓ Pole Locations and Numbers, with pole characteristics;
- ✓ Wire Routes and Size or Pair Count;
- ✓ Pedestal Locations;
- ✓ Marking Cross Box Locations and Size;
- ✓ Splice Points for Copper and Fiber Plant; and
- ✓ Remote Terminal Locations, their Associated CLLI Codes, and Whether They Are Copper or Fiber Feed

The very thought is laughable. Of course AT&T Kentucky does not send its personnel and contractors into the field without knowledge of all of the salient features and characteristics of its equipment and its plant locations. Of course it does not require its own personnel and contractors to wander the roads searching for pedestal locations, or to search the LMU for information they will never find.

SouthEast is entitled to nondiscriminatory access to this information. It cannot plan, much less deploy, its own infrastructure to serve the underserved and unserved rural areas of the Commonwealth until it receives full mapped information from AT&T Kentucky concerning its

main distribution frames, central offices, remote terminals, and the location and characteristics of its poles, pedestals, cross boxes, splice points, and wire routes.

AT&T Kentucky has argued over the years that the purpose of the Telecom Act is to encourage “facilities-based” competition. Ironically, AT&T Kentucky’s reluctance to provide SouthEast with the infrastructure information it needs to collocate is directly at odds with AT&T Kentucky’s own historic stance. SouthEast wishes to provide facilities-based competition. In order to do so, it must obtain the infrastructure information it has repeatedly requested.

The Commission should confirm its Order requiring AT&T to provide the information requested, in the same form and with the same specificity, that it provides that information to itself. Further, the Commission should order AT&T to include in the parties’ Interconnection Agreement language that makes this obligation clear. Proposed language is provided at Attachment A hereto.

CONCLUSION

For the foregoing reasons, SouthEast respectfully requests that the Commission enter its Order continuing to hold in abeyance Issue A-3 pending FCC resolution as to the appropriate switching rate, and requiring the parties to:

1. Incorporate into a single Interconnection Agreement to be filed with the Commission *all* terms and conditions governing the parties’ business relationship, including the price for Section 271 elements;
2. Incorporate into that single Interconnection Agreement the Commission’s additional decisions in Case No. 2004-00427 with regard to
 - a. Service quality standards and enforcement mechanisms;

b. Commingling, including the right to commingle any loop with Section 271 switching;

c. Line conditioning; and

d. Line sharing;

3. Incorporate into their Interconnection Agreement language that will implement the Commission's previous decisions on Issue A-4 (adjacent meet-point collocation and interconnection) and Issue A-9 (provision of customer and remote node location data) by specifying that the parties shall incorporate into their contract the language attached hereto -- language that ensures that AT&T Kentucky will provide, at TELRIC pricing, the same information necessary for collocation in the same form, and with the same specificity, that it provides such information to itself.

Respectfully submitted,



Deborah T. Eversole
STOLL KEENON OGDEN, PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
(502) 333-6000
deborah.eversole@skofirm.com

Bethany Bowersock
SouthEast Telephone, Inc.
106 Power Drive
Pikeville, KY 41502
Beth.Bowersock@setel.com

David L. Sieradzki
HOGAN & HARTSON LLP
555 - 13th St., N.W.
Washington, D.C. 20004
(202) 637-6462
DL.Sieradzki@hhlaw.com

CERTIFICATE OF SERVICE

It is hereby certified that this 25th day of January, 2008 I have served the foregoing upon the following by deposit in the U. S. Mail, first class:

Mary K. Keyer
601 W. Chestnut Street, Room 407
P.O. Box 32410
Louisville, Kentucky 40232

Andrew D. Shore
BellSouth Center – Suite 4300
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375


Deborah T. Eversole

EXHIBIT A

PROPOSED INTERCONNECTION AGREEMENT LANGUAGE

- 2.9 Wire Center Data Request Information. Upon SouthEast's request, AT&T will continue to provide SouthEast Telephone with access to the Collocation e-Application 2.20 product information and any product updates that come with this interface. The data request portion of this Collocation e-Application 2.20 product will support a data request for all wire center subscribers information including, but not limited to, (i) Remote Terminal subscribers; (ii) Central office served subscribers; and (iii) all other subscribers served by the requested wire center. The information provided in the data request will include the Remote Site CLLI code or Central office designation; Remote Site Address; the MSAG valid Subscriber Address; Subscriber Phone Number; and wire distribution count.
- 2.9.1 Additional Information to be Made Available on a Nondiscriminatory Basis. Upon request, AT&T shall also provide SouthEast the same information that it provides to its own technicians, engineers, network planners, or any other personnel within the company for the purpose of locating, maintaining, and repairing AT&T's network infrastructure, including but not limited to: (i) locations and CLLI Codes for all remote DLC and BLC carrier systems in the requested wire center; (ii) all pole locations and routes with each pole number clearly identified on the map in the requested wire center; (iii) pedestal locations and numbers; (iv) cross-box locations with the associated wire distribution count and the name, number and size of each; (v) copper route and splice locations; and (vi) fiber optic route and splice locations. AT&T shall also provide ordering capabilities for this information on a wire center basis. If AT&T makes any changes to plant and network components for any wire center for which infrastructure information has previously been requested by SouthEast, AT&T shall promptly provide updated information to SouthEast.
- 2.9.2 AT&T will (i) provide the information on a CD in PDF File format; and (ii) the information will be provided for each serving wire center designated by SouthEast. AT&T will bill the nonrecurring charge for this service pursuant to TELRIC pricing and on nondiscriminatory terms and conditions.