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February 25, 2008

RECEIVED

FEB 25 2008

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 in Support of It's Motion to Incorporate and Motion to Enforce.

Please acknowledge receipt of this filing 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

RECEIVED

FEB 25 2008

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

PUBLIC SERVICE
COMMISSION

**RESPONSE OF SOUTHEAST TELEPHONE, INC.
IN SUPPORT OF ITS MOTION TO
INCORPORATE AND MOTION TO ENFORCE**

SouthEast Telephone Inc. ("SouthEast"), for its Response in Support of its Motion to Incorporate into the parties' Interconnection Agreement certain key decisions reached by the Commission in its Final Order in Case No. 2004-00427 (the "Change of Law Order"),¹ and its Motion to Enforce the Commission decision herein requiring AT&T Kentucky to provide to SouthEast complete and nondiscriminatory access to information concerning its network infrastructure, states as follows:

INTRODUCTION

AT&T Kentucky objects to SouthEast's requests, but offers no substantive arguments to support that objection. Instead, in its Response filed on February 8, 2008 ("AT&T Kentucky Response"), AT&T Kentucky merely disputes the existence of a dispute. AT&T Kentucky appears to believe that the parties have no problems with regard to the furnishing of nondiscriminatory access to information or with regard to the provision of commingling, service quality standards, line conditioning, line sharing, and other issues raised by SouthEast. In

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), *Reconsideration Denied* (Jan. 18, 2008).

response to this odd (and inaccurate) argument, SouthEast affirmatively states that, if there is indeed no dispute, AT&T Kentucky should have no objection to issuance of a Commission Order granting SouthEast's motions.

With regard to AT&T Kentucky's request that the Commission set aside its resolution of Issue A-3 (the just and reasonable pricing of the local switching elements) in the March 28, 2007 arbitration order herein ("March 28 Order"),² SouthEast will not reiterate its answers to AT&T Kentucky's arguments on this subject. The Commission has already heard them. SouthEast does, however, note two things: [1] As the Commission is aware, its determination in this arbitration case regarding the just and reasonable terms for the local switching element will be a significant factor in the FCC's consideration of whether AT&T Kentucky has violated the norms of the Communications Act. It would not be proper, under the circumstances here, for the Commission to take any action that could prejudice SouthEast's opportunity to present its claims to the FCC; and [2] AT&T Kentucky itself finally recognizes that the District Court decision holding that the Commission lacks authority to act under Section 271 of the Telecommunications Act of 1996 (the "Telecommunications Act")³ is *not final*. That recognition is a necessary predicate to AT&T Kentucky's February 12, 2008, motion filed with the Court requesting that the decision be *made final*.⁴ As the parties hereto clearly agree that an appeal to the Sixth Circuit is still possible, there is no reason for this Commission to set aside its decision on Issue

² *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 Order (March 28, 2007); *Petition for Reconsideration and Rehearing granted in part and denied in part* (May 10, 2007).

³ September 18, 2007 Memorandum Opinion and Order, in *BellSouth Telecommunications, Inc. v. Kentucky Public Service Comm'n, et al.*, No. 3:06-00065-KKC (E.D. Ky.) (the "271 Jurisdiction Order").

⁴ See Plaintiff's Memorandum in Support of its Motion to Dismiss Counterclaim One without Prejudice and to enter Final Judgment; or, in the Alternative, Plaintiff's Motion Pursuant to Fed. R. Civ. P. 54(b) for Entry of Judgment and Determination There is No Just Cause for Delay With Respect to Those Claims Decided in the Court's September 18, 2007 Memorandum Opinion and Order, filed February 12, 2008 in *BellSouth Telecommunications, Inc. v. Kentucky Public Service Comm'n, et al.*, No. 3:06-00065-KKC (E.D. Ky.)

A-3. Even if the Commission had no obligation to advise the FCC, AT&T's request would still be premature. The decision on Issue A-3 should remain in abeyance, and the docket should remain open, pending resolution of the parties' ongoing, and very real, disputes, and final negotiation of their interconnection agreement.

ARGUMENT

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

The Commission should, in accordance with its Order in Case No. 2004-00427, enter its Order in this case requiring inclusion of all terms and conditions that govern the interconnection of SouthEast and AT&T into a *single Section 252 agreement that is enforced by the Commission*. Since AT&T Kentucky's renewed threats of disconnection forced SouthEast to enter into a "Commercial Agreement" which lacks quality control enforcement mechanisms, that lack has been of intense concern to SouthEast for obvious reasons. In addition, commingling, line conditioning at TELRIC rates regardless of the length of the loop, and nondiscriminatory access to line sharing are key to successful competition by a facilities-based competitor such as SouthEast. The decisions reached on these issues in Case No. 2004-00427 also should be ordered by the Commission to be added to the parties' *single, Section 252 agreement*. The *status quo*, which includes AT&T Kentucky's artificial and unilaterally-imposed limitations on its legal obligations, is unlawful and unacceptable. It should not be permitted to continue.

SouthEast explained the importance of these issues in its most recent filing in this case, and continues to believe that no hearing, evidence, or argument is necessary prior to issuance of the Order requested herein.

AT&T Kentucky requests that SouthEast's Motion to Incorporate be denied for the odd reason that it has no objection to incorporating these rulings "if necessary" [AT&T Kentucky

Response at 6-7]. If it does not object to incorporation, it should not object to a Commission order explicitly requiring such incorporation. However, its qualifier to its lack of objection – “if necessary” – demonstrates that, fact, negotiations on these issues are highly unlikely to be fruitful absent a Commission Order requiring them.

SouthEast’s motion should be granted.

II. THE COMMISSION SHOULD REQUIRE AT&T KENTUCKY TO ADOPT SOUTHEAST’S PROPOSED CONTRACT LANGUAGE REGARDING PROVISION OF INFRASTRUCTURE INFORMATION TO PREVENT FURTHER AVOIDANCE OF THE MARCH 28 2007 ORDER.

The Commission’s March 28, 2007 Order in this case required AT&T Kentucky to provide for adjacent collocation at any technical feasible point in its network unfettered by artificial and unlawful limitations (Issue A-4) and to provide the infrastructure information that AT&T Kentucky *provides to itself* so that SouthEast can *actually* collocate its facilities (Issue A-9). The Order is unequivocal on the point. AT&T Kentucky, however, refuses to comply, either in practice or in contract negotiation.

The Commission should end AT&T Kentucky’s stonewalling with regard to its obligations. SouthEast is entitled to infrastructure information that AT&T Kentucky provides to itself. Negotiations to implement the Commission’s decision so stating clearly ground to a halt when AT&T Kentucky refused to offer language more inclusive than the language is now has submitted to the Commission as Exhibit A to its Response in this case. Rather than continue futile negotiations and file case after case requesting Commission oversight and enforcement of the law each and every time SouthEast requests infrastructure information so it may collocate, SouthEast proposed in this case what it hopes will be an efficient resolution. Should the Commission grant Southeast’s motion and order AT&T Kentucky to include in the parties’ Interconnection Agreement the clear, unambiguous, and specific contract language submitted

herein by SouthEast, AT&T Kentucky will be compelled to comply, and the parties and the Commission will be spared the series of complaint cases that would otherwise almost certainly result.

AT&T Kentucky's sole objection to SouthEast's request that this impasse be resolved by Commission Order is an odd one. Contending that "there is no need for Commission involvement unless and until the Parties have reached an impasse regarding implementing contract language," AT&T Kentucky asserts that "SouthEast does not even allege" that there is an impasse [AT&T Kentucky Response at 8]. The statement could not possibly be more inaccurate. SouthEast in its Response to AT&T Kentucky Filing, Motion to Incorporate, and Motion to Enforce, at 8, *expressly stated* that "negotiations for language to implement this obligation are *at an impasse*, and SouthEast's plans to build out its network are necessarily on hold." (Emphasis added.)

SouthEast could not disagree more with AT&T Kentucky's contention that there is no "bona fide dispute" with regard to contract language to implement the Commission's Order. That bona fide dispute is, moreover, quite beyond resolution as long as AT&T Kentucky continues to assert a right to deny SouthEast nondiscriminatory access to information that it needs to collocate. SouthEast 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's assertion that the parties have no dispute on the subject is not only as wrong as it can be; it is counter-intuitive. If there were no "bona fide dispute," SouthEast would

not expend resources to bring the issue to the Commission. Moreover, AT&T Kentucky supports, rather than refutes, SouthEast's argument by filing its own most recent "negotiation" position – the contract language it last presented to SouthEast [Exhibit A, AT&T Kentucky Response]. AT&T Kentucky's proffered Section 2.9.1 not only fails to include language that will ensure SouthEast's ability to obtain information it needs; it specifically states that the *only* maps it will provide SouthEast will contain *only* the location of remote terminals and will be "redacted" so as not to provide "any other AT&T proprietary information." That "other AT&T proprietary information" is needed by SouthEast to collocate, and AT&T Kentucky knows it.

AT&T Kentucky addresses only process and never substance, offering no reason why it should not be required to comply with the Commission's Order by including SouthEast's proffered language in the parties' interconnection agreement. It neither claims that the language submitted by SouthEast exceeds the scope of the Commission's Order nor disputes SouthEast's right to obtain any of the information specified.

If AT&T Kentucky did not intend to stonewall SouthEast's lawful requests, there would be no reason for it to object to SouthEast's proposed language. SouthEast respectfully requests that the Commission reject AT&T Kentucky's odd argument that there is no dispute, and efficiently resolve the dispute that is properly before it, by entering its Order requiring the proposed contract language filed by SouthEast on January 25, 2008, to be made a part of the parties' interconnection agreement.

CONCLUSION

For the foregoing reasons, and for the reasons stated in its January 25, 2008 filing, SouthEast respectfully requests that the Commission enter its Order rejecting AT&T's request to

set aside its decision on Issue A-3, granting SouthEast's Motion to Incorporate, and granting SouthEast's Motion to Enforce.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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

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675 West Peachtree Street, N.E.
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