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February 9, 2007

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PUBLIC SERVICE
COMMISSION

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Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Blvd., PO Box 615
Frankfort, KY 40602

Case No. 2007-00071

Re: *BellSouth Telecommunications, Inc.'s Notice of Intent to Disconnect SouthEast Telephone, Inc. for Non-Payment, Case No. 2005-00519*
SouthEast Telephone, Inc., Complainant v. BellSouth Telecommunications, Inc., Defendant,
~~Case No. 2005-00533~~

Dear Ms. O'Donnell:

I am writing on behalf of SouthEast Telephone, Inc. ("SouthEast") in support of SouthEast's Jan. 4, 2007 Motion to Compel BellSouth to comply with the Commission's August 16, 2006 *Order* in these proceedings, and to reply to BellSouth's Jan. 22, 2007 filing in opposition to SouthEast's Motion.

BellSouth believes it can get away with continuing to force SouthEast to submit orders for the loop-switching-transport group of network elements through the resale ordering system. BellSouth attempts to justify this argument on the basis that "SouthEast ordered those services that were negotiated by the Parties and that were available to SouthEast under its Interconnection Agreement – namely, resale services." BellSouth Opp. at 2. This is precisely the same position that BellSouth took in its briefs in the earlier stages of these proceedings, which the Commission squarely rejected in its *Order*. Although the TELRIC pricing rules no longer apply to this group of elements pursuant to Section 251, the Commission held that "BellSouth [still] must provide access to switching and transport elements for SouthEast pursuant to Section 271." *Order* at 11.

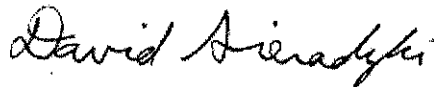
The BellSouth-SouthEast Interconnection Agreement, which (apart from certain pricing provisions) remains in effect, specifies operational support systems, including ordering systems, under which BellSouth will provide SouthEast with access to the loop, switching and transport group of elements. The Agreement also makes it clear that SouthEast is entitled to the CABS revenue (*i.e.*, access charges) received in connection with these lines. While the TELRIC rates

specified in the Interconnection Agreement no longer apply (and the Commission has yet to establish a permanent rate for these elements), the other provisions of the Commission-approved Agreement remain in full force and effect under the Agreement's "Severability" provision. ^{1/} The Commission in the *Order* dismissed "BellSouth's request to terminate service" under the Agreement. *Order* at 13, ordering clause ¶ 5. Accordingly, BellSouth must come into compliance with the *Order* and the Interconnection Agreement.

To the extent the parties disagree over the specific dollar amounts that must be paid to comply with the *Order*'s "TELRIC plus \$1" rate, SouthEast would hope that the correct amounts can be worked out informally by the parties, if necessary with the aid (*i.e.*, mediation) of the Commission, without the need for another full evidentiary hearing.

Please contact me if you have any questions.

Respectfully submitted,



David L. Sieradzki
Counsel for SouthEast Telephone, Inc.

cc: Amy E. Dougherty
Mary K. Keyer
Andrew D. Shore
Darrell Maynard

^{1/} "If any provision of this Agreement, or the application of such provision to either Party or circumstance, shall be held invalid, the remainder of the Agreement, or the application of any such provision to the Parties or circumstances other than those to which it is held invalid, shall not be affected thereby, provided that the Parties shall attempt to reformulate such invalid provision to give effect to such portions thereof as may be valid without defeating the intent of such provision." General Terms and Conditions, § 18.

BellSouth Telecommunications, Inc.
601 W. Chestnut Street
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Louisville, KY 40203

Mary.Keyer@BellSouth.com

Mary K. Keyer
General Counsel/Kentucky

502 582 8219
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January 19, 2007

RECEIVED

JAN 22 2007

PUBLIC SERVICE
COMMISSION

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

Re: BellSouth Telecommunications, Inc.'s Notice of Intent to Disconnect
SouthEast Telephone, Inc. for Nonpayment
~~PSC 2005-00519~~

SouthEast Telephone, Inc., Complainant v. BellSouth
Telecommunications, Inc., Defendant
~~PSC 2005-00533~~

Case No. 2007-00071

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned cases are the original and ten (10) copies of BellSouth's Response to Motion to Compel and Cross-Motion to Compel.

Sincerely,


Mary K. Keyer

cc: Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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JAN 22 2007

PUBLIC SERVICE
COMMISSION

In the Matter of:

BELLSOUTH TELECOMMUNICATIONS,)
INC.'S NOTICE OF INTENT TO) CASE NO. 2005-00519
DISCONNECT SOUTHEAST)
TELEPHONE, INC. FOR NONPAYMENT)

AND

SOUTHEAST TELEPHONE, INC.)
)
COMPLAINANT) CASE NO. 2005-00533
)
VS.)
)
BELLSOUTH TELECOMMUNICATIONS, INC.)
)
DEFENDANT)

**BELLSOUTH TELECOMMUNICATIONS, INC.'S, RESPONSE
TO MOTION TO COMPEL AND CROSS MOTION TO COMPEL**

BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, for its response to SouthEast Telephone, Inc.'s ("SouthEast") Motion to Compel and its cross motion to compel in the above-captioned case states as follows: SouthEast's Motion to Compel should be denied for the reasons set forth herein. Additionally, the Commission should compel SouthEast to comply with the Commission's Order and pay the TELRIC plus \$1 rate set forth by the Commission in its August 16, 2006, Order.

I. SouthEast's Motion to Compel Should Be Denied.

SouthEast is essentially claiming that BellSouth is in violation of the Commission's August 16, 2006, Order by not providing SouthEast access to place

orders under BellSouth's preexisting UNE-P ordering process or by not creating a new provisioning process for SouthEast to place such orders. Simply stated, there is nothing in the Commission's Order that requires BellSouth to do either of these; therefore, SouthEast's motion should be denied.

Although the Commission held that BellSouth must provide access to switching and transport elements for SouthEast pursuant to § 271 at the rates specified in its Order,¹ SouthEast did not ask the Commission to establish the terms and conditions pursuant to which those elements would be provided, and the Commission did not mandate any specific provisioning or service requirements or other terms and conditions. The Commission merely found that TELRIC plus \$1 "would be an appropriate rate for the *services ordered by SouthEast from April 27, 2005*, until the parties can agree on a new rate or until the Commission can establish one." (Emphasis added.)

When SouthEast ordered the services at issue in this case from April 27, 2005, SouthEast and BellSouth had not, and still have not, negotiated terms under which SouthEast could obtain elements pursuant to § 271 from BellSouth. Nor was SouthEast entitled to § 251 switching elements or UNE-P under its Interconnection Agreement with BellSouth. SouthEast ordered those services that were negotiated by the Parties and that were available to SouthEast under its Interconnection Agreement – namely, resale services. Pursuant to the Commission's August 16, 2006 Order, BellSouth is via the resale ordering mechanism provisioning to SouthEast the combined loop and port that the Commission mandated. BellSouth agrees that it is obligated at this time to offer

¹ The Commission's Order is currently on appeal to the federal district court in the Eastern District of Kentucky.

such services at the rate established by the Commission, and at SouthEast's admission, has not claimed otherwise. The process that SouthEast uses to order these services was not mandated by the Commission, and clearly BellSouth is not obligated to create the process SouthEast is seeking.

Further, this Commission did not order BellSouth to provision UNE-P services to SouthEast. Such an order clearly would have been a direct violation of the federal court's "no new adds" order. Nor did the Commission order any terms and conditions surrounding BellSouth's offering of Section 271 elements. Those terms and conditions must be negotiated between the parties just as they have been with every other CLEC in Kentucky to which BellSouth provides § 271 elements. The Commission simply set a rate and ordered SouthEast to pay BellSouth in accordance with that rate until the parties have had adequate opportunity to negotiate a different rate or until the Commission has established a rate, neither of which has occurred. Nor has SouthEast paid such rate.

SouthEast's so-called "motion to compel" is nothing more than an attempt by SouthEast to have the Commission supplement or reconsider its August 16, 2006, Order to add terms and conditions that were not included in the original Order. SouthEast's Motion to Compel is asking this Commission to direct BellSouth to do something the Commission did not order it to do in its August 16, 2006, Order – namely, implement its preexisting UNE-P ordering process or create a new provisioning process for SouthEast – and should be denied.

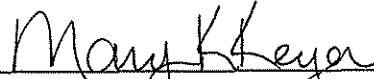
II. The Commission Should Compel SouthEast to Pay the TELRIC Plus \$1 Rate for Services Ordered.

To date, SouthEast has not paid BellSouth the rate of TELRIC plus \$1 pursuant to the Commission's Order for the services it has ordered from April 27, 2005, but is withholding amounts it claims are damages for lost CABS revenue that may have come from charges associated with the services, thereby resulting in payments at a rate less than the TELRIC plus \$1 rate set by the Commission for the services ordered from April 27, 2005. There is nothing in the Commission's Order to support SouthEast's claims for such damages or to support SouthEast withholding such amounts from its payments to BellSouth. SouthEast's actions are in violation of the Commission's Order; therefore, BellSouth's Cross-Motion to Compel SouthEast to pay the rate ordered by the Commission should be granted.

Even if SouthEast were entitled to such damages for the alleged lost CABS revenue under the Commission's Order, which BellSouth disputes, there would be a factual dispute as to what the appropriate amounts for such damages would be, and there would have to be a hearing to determine the appropriate amount of such damages based on the evidence presented by both Parties.

[Signatures on following page]

Respectfully submitted,



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COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

664321

CERTIFICATE OF SERVICE -- KPSC 2005-00519 and 2005-00533

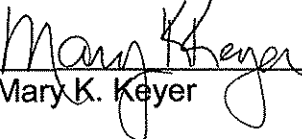
It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by email, this 19th day of January, 2007.

Darrell Maynard
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Hon. Jonathon N. Amlung
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Bethany Bowersock
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Hon. David L. Sieradzki
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Mary K. Keyer

SouthEast Telephone

January 3, 2007

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

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JAN 04 2007

PUBLIC SERVICE
COMMISSION

Re: ~~PSC 2005-00519~~
~~PSC 2005-00533~~

Dear Ms. O'Donnell:

Case No. 2007-00071

Enclosed for filing in the above-captioned cases is the original and ten (10) copies of SouthEast Telephone's Inc.'s Motion to Compel.

Sincerely,



Bethany L. Bowersock
General Counsel
SouthEast Telephone, Inc.

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JAN 04 2007

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE
COMMISSION

In the Matter of:

BELLSOUTH TELECOMMUNICATIONS, INC.'S)
NOTICE OF INTENT TO DISCONNECT)
SOUTHEAST TELEPHONE, INC. FOR NON-)
PAYMENT)

CASE NO.
~~2005-00519~~

AND

SOUTHEAST TELEPHONE, INC.)

Case No. 2007-00071

COMPLAINANT)

CASE NO.
~~2005-00533~~

VS.)

BELLSOUTH TELECOMMUNICATIONS, INC.)

DEFENDANT)

MOTION TO COMPEL

SouthEast Telephone, Inc. ("SouthEast") hereby requests this Commission to compel BellSouth to follow the Commission's directive in the Public Service Commission Order dated August 16, 2006.

In the Order referred to above, the Commission held that BellSouth must provide access to switching and transport elements pursuant to Section 271 commingled with unbundled loops. The Commission also determined that the correct pricing for the combined elements of Section 271 switch port plus loop pricing would be TELRIC plus \$1 until such time as the parties have had an adequate opportunity to negotiate a different rate or until the Commission established a rate. Although BellSouth has filed a lawsuit challenging the Commission's Order, it has asked neither

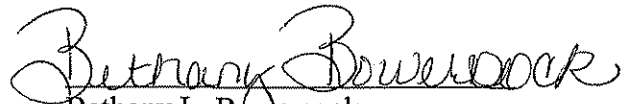
this Commission nor the Court to stay the effectiveness of the Order, and neither the Commission nor the Court has granted such a stay. Accordingly, the Commission's August 16, 2006 Order remains in full force and effect.

BellSouth continues to compel SouthEast to submit orders for provisioning new lines and maintaining and changing existing lines on a resale basis instead of based on a combined element platform. BellSouth also continues to bill SouthEast at the resale rate (with credits issued for the pricing difference), rather than applying the TELRIC plus \$1 rate established by the Commission and enabling SouthEast to have a zero balance due.

In a letter dated September 26, 2006, SouthEast requested BellSouth to allow SouthEast to submit provisioning orders via BellSouth's preexisting ordering process for combinations of loops, switching, and transport elements, until a new provisioning process is instituted for Section 271 pricing. In a response sent on Oct. 13, 2006, BellSouth refused to comply with this request. (BellSouth also refused to issue credits to SouthEast for inappropriately applied universal service fund disbursements.)

Unless and until the Commission directs BellSouth to allow SouthEast to place orders for a switch port/ loop combination, BellSouth is in violation of the Commission's Order issued on August 16, 2006. Accordingly, SouthEast respectfully requests this Commission compel BellSouth to allow SouthEast to utilize its preexisting combined elements provisioning process (or to create such a process, if necessary) in order to fulfill the Commission's directive in the aforementioned order.

Respectfully Submitted,



Bethany L. Bowersock
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(606) 432-3000

David L. Sieradzki
Hogan & Hartson, LLP
555 - 13th St., NW
Washington, DC 20004
(202) 637-6462


Dated: January 3, 2007

CERTIFICATION

I hereby certify that a true and correct copy of the foregoing was mailed, this the 3rd day

of January, 2007, to:

Mary K. Keyer
601 W. Chestnut Street
Room 407
Louisville, KY 40203



Bethany L. Bowersock
General Counsel
SouthEast Telephone