

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SOUTHEAST TELEPHONE, INC.'S)	
MOTION TO COMPEL BELLSOUTH)	
TELECOMMUNICATIONS, INC. TO)	CASE NO.
COMPLY WITH THE COMMISSION'S)	2007-00071
AUGUST 16, 2006 ORDER AND)	
BELLSOUTH TELECOMMUNICATIONS,)	
INC.'S RESPONSE THERETO)	

O R D E R

On January 4, 2007, SouthEast Telephone, Inc. ("SouthEast") filed a motion with the Commission seeking to compel BellSouth Telecommunications, Inc. ("BellSouth") to comply with an August 16, 2006 Order issued in closed cases.¹

SouthEast's motion to compel asserts that BellSouth has failed to implement the Order, which required access to switching and transport elements pursuant to 47 U.S.C. § 271 commingled with unbundled loops provided pursuant to 47 U.S.C. § 251. According to SouthEast, the Order necessarily mandated that these elements be made available through an ordering system similar to that used by BellSouth for its unbundled network elements. Currently, SouthEast must use BellSouth's resale ordering system to obtain these three elements on a commingled basis.

¹ SouthEast filed its motion to compel in Case No. 2005-00519, BellSouth Telecommunications, Inc.'s Notice of Intent to Disconnect SouthEast Telephone, Inc. for Non-Payment; and Case No. 2005-00533, SouthEast Telephone, Inc. v. BellSouth Telecommunications, Inc. As these two dockets are closed, the Commission docketed this motion to compel and response thereto in a new case (Ky. PSC, Aug. 16, 2006).

On January 22, 2007, BellSouth filed its response to SouthEast's motion to compel, including a cross-motion to compel. BellSouth claims that the Commission did not mandate specific provisioning or service arrangements for the switching, transport, and loop elements. Thus, BellSouth asserts that it has complied with the Order. Moreover, according to BellSouth, SouthEast is paying amounts less than those ordered by the Commission. On February 12, 2007, SouthEast filed a response to BellSouth's cross-motion.

As the parties note, the Order for which SouthEast and BellSouth both seek to compel compliance from the other is the subject of litigation in federal court.² Given that this matter is pending in litigation, in which briefs have been filed and an oral argument is scheduled, the Commission finds that it would be inappropriate for it to speak further on these issues. These motions will, therefore, be held in abeyance pending the outcome of the litigation. SouthEast correctly asserts that BellSouth has neither sought nor received a temporary restraining order. Accordingly, the Commission's August 16, 2006 Order remains in full force and effect. However, at this time the Commission declines to address matters which are pending in litigation.

IT IS THEREFORE ORDERED that this case be held in abeyance until the Court rules on the litigation in Case No. 3:06-cv-00065-KKC.

² Case No. 3:06-cv-00065-KKC, BellSouth Telecommunications, Inc. v. Kentucky Public Service Commission; Mark David Goss, in his official capacity as Chairman of the PSC; Teresa J. Hill, in her official capacity as Vice Chairman of the PSC; and SouthEast Telephone, Inc. (E.D. Ky.).

Done at Frankfort, Kentucky, this 28th day of February, 2007.

By the Commission

ATTEST.



Executive Director

Case No. 2007-00071