



S T O L L · K E E N O N · O G D E N
P L L C

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

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

April 6, 2009

RECEIVED

APR 06 2009

PUBLIC SERVICE
COMMISSION

Mr. Jeff DeRouen
Executive Director
Public Service Commission
P.O. Box 615
Frankfort, KY 40602

**RE: *SouthEast Telephone, Inc. v. BellSouth Telecommunications, Inc.
d/b/a AT&T Kentucky
Case No. 2008-00279***

Dear Mr. DeRouen:

Please find enclosed an original and ten copies of SouthEast Telephone, Inc.'s Reply in Support of Motion to Incorporate.

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

101164.117856/543656.1

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

SOUTHEAST TELEPHONE, INC)	
)	
Complainant,)	
)	
v.)	CASE NO. 2008-00279
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
d/b/a AT&T KENTUCKY)	
)	
Defendant)	

**SOUTHEAST TELEPHONE, INC.’S
REPLY IN SUPPORT OF MOTION TO INCORPORATE**

SouthEast Telephone, Inc. (“SouthEast”), by counsel, for its Reply in Support of Motion to Incorporate, states as follows:

* * *

In its Motion to Incorporate Additional Compliance Issues submitted on March 3, 2009, in this case (the “Motion”), SouthEast sought to obtain an order from the Commission clarifying that its eventual decision with regard to the scope of the bill credits for commingled arrangements ordered by SouthEast will also expressly address AT&T’s imposition of installation, rather than conversion, charges for converting its WLP billing to commingled element billing; SouthEast’s difficulty in obtaining from AT&T commingled arrangements for lines served via remote terminal; and ongoing disputes with regard to certain “qualifiers” AT&T has placed on SouthEast’s ability to order the copper loop, nondesign, when the loop is ordered commingled with the port.

There are three simple reasons that these issues should be explicitly resolved in, rather than dismissed from, this case. First, the Complaint filed by SouthEast asked the Commission to

enforce its Order in Case No. 2004-00427, *In the Matter of Petition of BellSouth Telecommunications, Inc. to Establish Generic docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law* (Dec. 12, 1007) “*Change of Law Order*”), wherein the Commission ruled, on Issue 14, that AT&T must, on a nondiscriminatory basis, “provide to its competitors commingled network elements and combinations of such elements with all wholesale services and facilities, including network elements required to be provided under Section 271 of the Telecommunications Act of 1996” [SouthEast Complaint, at 1]. Each issue mentioned in SouthEast’s Motion is already within the scope of this case.

Second, each and every one of the issues discussed in the Motion is unresolved and each, standing alone, meets the *prima facie* standard for filing a complaint pursuant to KRS 278.260. As to each, SouthEast makes the statutorily-specified allegations with regard to rates and services in which it is “directly interested,” and alleges, furthermore, that those rates and services are unreasonable, inadequate, and/or contrary to law. It would make no sense, either as a matter of logic or as a matter of administrative efficiency, to dismiss these issues from this case simply to have them arise again in yet another complaint proceeding to enforce the Commission’s decision on Issue 14 in the *Change of Law Order*. The issues are legitimate ones and should be decided in the context of a single case.

Third, Commission decisions on these three issues must *precede* final decisions on the issues the Commission has explicitly set a procedural schedule to decide: “whether AT&T Kentucky acted unreasonably in waiting until December 1, 2008, to facilitate the commingled element orders and, if so, the refunds or credit amounts that are due to SouthEast for AT&T Kentucky’s failure to facilitate those orders prior to that date.” The Commission cannot determine the amount to which SouthEast is reasonably entitled without determining whether

certain of its commingling requests have been unreasonably denied. The Commission cannot determine whether the delay has been “unreasonable” without an inquiry into the ordering process. The Commission cannot determine the amount to which SouthEast is reasonably entitled without determining whether its bill credits should be offset by an “installation,” rather than a “conversion,” charge for the lines converted to a commingled arrangement.

Indeed, seventeen days after SouthEast’s submission of its Motion on March 3, 2009, the Commission Staff’s own data requests demonstrated the inextricable linkage between the issues discussed in SouthEast’s Motion and the issues that the Commission has explicitly said are before it. Question 1 of Staff’s Data Requests to SouthEast directly addresses the assessment of installation rather than conversion charges (as does Staff’s Question 1 to AT&T). Staff Questions 2 and 3 address, respectively, the types of loops SouthEast assumes are available when it places an order and the types of loops available for locations SouthEast serves. The answers to these questions include, perforce, explanations of the ordering process, the network infrastructure information problems that have plagued SouthEast in its efforts to negotiate that ordering process, and the propriety of the qualifiers AT&T has placed on SouthEast’s orders. Similarly, Commission Staff’s Data Request No. 2 to AT&T asks AT&T to state its objections to SouthEast’s calculations of bill credits it should receive. As stated above, a resolution as to the proper calculations for bill credits will be directly dependent upon findings as to [1] the locations for which SouthEast is entitled to commingled arrangements; [2] whether AT&T properly denied and/or delayed commingled billing for certain of those locations; and [3] the network infrastructure involved at those locations.

AT&T in its Response to Motion to Incorporate Additional Compliance Issues (“Response”), at 2, states that the question with regard to installation charges “appears already to

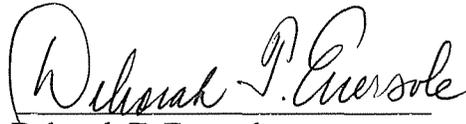
be included in this proceeding,” as it already has been discussed in a prior data request response, and AT&T does not appear to object to resolution of the question. In the remainder of its Response, AT&T argues that SouthEast prematurely seeks Commission involvement in issues concerning whether AT&T’s denials of commingling requests are improper and whether SouthEast should receive commingled arrangements at remote terminals. As AT&T points out (and as SouthEast previously explained in its Motion), talks between the parties are ongoing, and it is to be hoped that the issues can be resolved absent Commission Order.

SouthEast certainly does not object to further discussions between the parties, and plans to continue those discussions to the fullest extent possible during the pendency of this proceeding. Like AT&T, SouthEast hopes to resolve these issues prior to hearing. SouthEast attempted to resolve them prior to bringing them explicitly before the Commission in this case. However, the time to resolve these questions without any Commission involvement at all has clearly expired. The Commission has set a procedural schedule in this case, and data requests and testimony, already subject to deadlines, must address all relevant issues. No order fully addressing the bill credit issue can be issued until the Commission determines which lines should be credited, and under what circumstances. Nor can there be any resolution to the inquiry as to the “reasonableness” of the delay imposed upon SouthEast’s requests for commingled elements until the Commission has looked into the ordering process and into the reasons AT&T has refused certain arrangements. The Commission Staff, in its data requests to the parties, has already begun to explore those issues. No one’s interests would be served by an attempt to sever the issue of bill credits from the issue of the types of circuits for which bill credits should be issued. No conclusion on the “reasonableness” of the delay in filling SouthEast’s Orders can be reached without a record explaining what has happened (and whether it should have happened)

when SouthEast attempted to place those orders. Finally, SouthEast's due process right to a resolution of its Complaint would be lost if the Commission refused to consider issues that are central to that Complaint.

SouthEast respectfully reiterates its request that the issues cited in its Motion be explicitly addressed in this case.

Respectfully submitted,



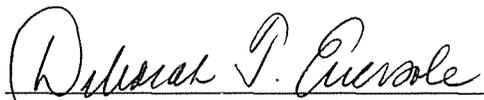
Deborah T. Eversole
Douglas F. Brent
STOLL KEENON OGDEN, PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
(502) 333-6000

Bethany Bowersock
SouthEast Telephone, Inc.
106 Power Drive
Pikeville, KY 41502
(606) 437-3097

Counsel for SouthEast Telephone, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on this 6th day of April, 2009, a full and complete copy of the foregoing was sent by United States Mail, postage prepaid, to Mary K. Keyer, 601 W. Chestnut Street, Room 407, P.O. Box 32410, Louisville, Kentucky, 40232; Lisa S. Foshee, 675 W. Peachtree Street, N.W., Atlanta, Georgia 30375; and Douglas F. Brent, Stoll Keenon Ogden, PLLC, 2000 PNC Plaza, 500 West Jefferson Street, Louisville, KY 40202.



Counsel for SouthEast Telephone, Inc.