

SouthEast Telephone

June 26, 2009

Via UPS Overnight

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

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COMMISSION

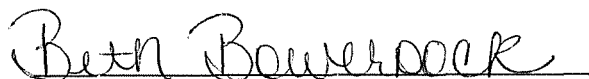
Re: SouthEast Telephone, Inc., Complainant v. BellSouthTelecommunications, Inc. d/b/a AT&T
Kentucky, Defendant
Case No. 2008-00279

Dear Mr. Derouen:

Enclosed please find the original and ten (10) copies of the Prefiled Testimony of Darrell Maynard.

Thank you for your attention to this matter, if you have any questions or concerns feel free to contact me at your convenience.

Sincerely,



Bethany Bowersock
In House Counsel
SouthEast Telephone, Inc.

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE
PUBLIC SERVICE COMMISSION OF KENTUCKY

Case No. 2008-00279

DIRECT TESTIMONY OF
DARRELL MAYNARD

ON BEHALF OF
SOUTHEAST TELEPHONE, INC.

JUNE 29, 2009

**DIRECT TESTIMONY OF
DARRELL MAYNARD**

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Q. Please state your name, business address, position, and qualifications.

A. My name is Darrell Maynard. I am employed by SouthEast Telephone, Inc. (“SouthEast”). My business address is 106 Scott Avenue, Pikeville, Kentucky, 41501. I am employed by SouthEast as President, a position I have held since 1996. Prior to joining SouthEast, I served as President of Eastern Telephone Company, Pikeville, Kentucky (A Telephone Interconnect Company) from 1984 to 1996. I attended Michigan Technological, majoring in Electrical Engineering.

Q. Have you previously testified before this Commission?

A. Yes, I have testified before the Commission previously on behalf of SouthEast.

Q. Please summarize the purpose of your testimony in these proceedings.

A. The primary purpose of my testimony is to explain that the delays, difficulties, expenses, and limitations that BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (“AT&T”) has imposed upon SouthEast with regard to SouthEast’s attempt to exercise its right to commingled elements are unreasonable and in violation of applicable law and the Commission’s Orders. My testimony primarily addresses the adverse financial effects on

1 SouthEast that have arisen from AT&T's reluctance, and in many cases, its
2 refusal, to comply with PSC Case No. 2004-00427, *In the Matter of Petition of*
3 *BellSouth Telecommunications, Inc. to Establish Generic Docket to Consider*
4 *Amendments to Interconnection Agreements Resulting from Changes of Law*
5 (Dec. 12, 2007) (the "Change of Law Order"). In the Change of Law Order,
6 the Commission definitively ruled, over AT&T's objections, that competing
7 local exchange carriers are entitled to order network elements AT&T is
8 required to provide under 47 U.S.C. § 251 with network elements AT&T is
9 required to provide under 47 U.S.C. § 271. Eighteen months after issuance of
10 the Change of Law Order, AT&T is still finding ways to avoid complying with
11 its obligations, and even when it does comply, it imposes additional, all but
12 prohibitive costs on SouthEast, such as a \$79.92 "installation" fee on each
13 line converted from the wholesale local platform rate to the commingled
14 element rate.

15 **Q. Why did SouthEast bring this complaint?**

16 A. On June 16, 2008, pursuant to the executed amendment to SouthEast's
17 interconnection agreement with AT&T (an amendment presented to
18 SouthEast as a document that would conform the parties' existing
19 interconnection agreement with the decisions in the Change of Law Order),
20 SouthEast began attempting to place with AT&T orders for commingled
21 Section 251 elements and Section 271 elements. Over three weeks later, in
22 response to SouthEast's inquiries, on July 9, 2008, SouthEast was notified by

1 AT&T that its request for commingled elements had been denied. AT&T
2 informed SouthEast that orders for Section 251 elements and Section 271
3 elements would have to be made separately; that AT&T would not perform
4 the functions necessary to attach those elements; and that AT&T would
5 provide such elements only to those offices in which SouthEast has a
6 collocation arrangement. This position was clearly at odds with the
7 Commission's Change of Law Order.

8 **Q. Has progress been made since AT&T's initial refusals to provide**
9 **commingled elements?**

10 A. Yes, there has been progress since SouthEast complained formally to the
11 Commission. AT&T has agreed that SouthEast is entitled to commingled
12 elements, even though it has delayed providing them, making various
13 arguments that providing the arrangements requested is very difficult and
14 complicated. Finally, in December of 2008, 6 months after SouthEast had
15 begun placing orders, 7 months after the parties signed the amendment that
16 permitted SouthEast to order commingled elements, and 12 months after the
17 Change of Law Order, AT&T began providing "bill credits" for certain lines
18 that, in its terminology, "qualified" under the terms of SouthEast's orders.
19 However, 39% of SouthEast's orders for commingled element arrangements
20 have been denied since December 24, 2008. We are concerned that those
21 orders were rejected. We are also concerned that even the orders that were

1 filled – at least to the extent that AT&T bills as if they had been – were not
2 timely filled. The delay in filling these orders has injured SouthEast.

3 **Q. How has AT&T’s delay in filling these commingled element orders**
4 **(at least to the extent that AT&T now bills for these lines as if they**
5 **had been filled) injured SouthEast?**

6 A. A WLP line costs SouthEast \$45.74 per line in Zone 3 (Loop \$30.59, Port
7 \$8.15, Usage \$7.00). A commingled arrangement by which SouthEast buys
8 from AT&T a commingled port and a copper loop, nondesign, costs \$21.71 in
9 Zone 3 (Loop & Cross_Connect \$13.22 and Port \$8.49). The financial loss to
10 SouthEast that results from AT&T’s delay is tremendous.

11 **Q. Why do you consider AT&T’s delay in issuing “bill credits” for the**
12 **difference between the prior price and the commingled element**
13 **price unreasonable?**

14 A. First of all, it is unreasonable on its face that AT&T did not even *nominally*
15 comply with the Commission’s Change of Law Order until almost a year after
16 that Order was entered. When the Commission enters an order it is in full
17 force and effect and, under KRS 278.390, it remains in full force and effect
18 until the Commission, or a court of competent jurisdiction, rules otherwise.
19 Second, although AT&T claims there are technical difficulties involved in
20 complying with SouthEast’s orders for the port commingled with copper loop,
21 nondesign, there certainly was no technical difficulty in altering the billing
22 arrangement to ensure that SouthEast was not the one to suffer because

1 AT&T was out of compliance with the law. In the end, AT&T decided simply
2 to change the billing anyway. That billing change could have (and should
3 have) taken place as soon as SouthEast began submitting orders for
4 commingled elements. SouthEast should not have to pay for AT&T's
5 reluctance to comply with the law. SouthEast is entitled to billing
6 adjustments that include all those months from June 2008 on during which
7 SouthEast was placing orders for arrangements to which it is lawfully
8 entitled and AT&T was denying them.

9 **Q. Please explain why SouthEast does not believe that AT&T can**
10 **reasonably or lawfully charge an "installation" charge when it**
11 **changes the billing for a particular line from the wholesale local**
12 **platform ("WLP") rate to the commingled element rate?**

13 **A.** The answer is simple common sense. An installation charge is improper
14 because there is no "installation" that takes place on these lines. SouthEast
15 does not object to paying a "conversion" charge, as the billing system is in fact
16 "converted" from WLP to commingled elements. But since there is no
17 installation, "installation" charges are automatically unwarranted. In a case
18 in which AT&T actually is required to go into the field and physically alter
19 the line, SouthEast understands that some cost-based charge other than
20 conversion is appropriate; but that is not the case when all AT&T changes is
21 the way it bills SouthEast.

1 Q. What is the difference between the installation fee and the
2 conversion fee?

3 A. AT&T's installation fee that it has notified SouthEast it intends to charge for
4 each WLP line it converts to a commingled element line is \$79.92. Section
5 1.4.4.1 in Attachment 2 to the SouthEast-AT&T interconnection agreement
6 provides for a conversion charge of \$8.98. It is obvious that \$8.98 is more
7 than sufficient payment to change the billing on a line. AT&T's demand for
8 \$79.92 per line to "install" equipment when it will not actually "install"
9 anything is all the more outrageous because, approximately eighteen months
10 ago AT&T charged SouthEast \$300,759.46 to convert the lines from resale to
11 the wholesale local platform, the 47 U.S.C. §271 element arrangement
12 provided under AT&T's "commercial agreement." SouthEast signed that
13 "commercial agreement" after Judge Caldwell vacated the Commission's
14 order requiring AT&T to provide §271 elements at the total element long run
15 incremental price plus one dollar.¹ Now AT&T demands approximately
16 \$466,314.09 to convert SouthEast's lines again. Every attempt by SouthEast
17 to continue competing against AT&T on a reasonably priced basis is met by
18 yet another prohibitively exorbitant AT&T bill issued without any sort of cost
19 justification and backed by threats of disconnection. AT&T should not be
20 allowed to charge fees that do not have even an abstract grounding in reality.

¹ *BellSouth Telecommunications, Inc. v. Kentucky Public Service Comm'n*, No. 06-65-KKC, 2007 WL 2736544 (E.D. Ky. 2007)

1 **Q. Are your experiences in attempting to order a copper loop,**
2 **nondesign when you're also ordering a §271 port to commingle with**
3 **it comparable to your experience in ordering a copper loop,**
4 **nondesign when you want to combine that loop with a port that is**
5 **owned by SouthEast?**

6 A. Absolutely not. SouthEast has ordered at least 1,740 nondesigned copper
7 loops to combine with SouthEast's own port, and in those instances, we have
8 encountered no difficulty whatsoever. It is painfully clear that AT&T's
9 sudden discovery of the "qualifiers" that must be imposed on the availability
10 of the copper loop, nondesign, and the delay that takes place when a copper
11 loop, nondesign is ordered in a commingled arrangement is related solely to
12 AT&T's desire to limit SouthEast's ability to obtain commingled elements.
13 Indeed, this entire controversy has served as a vivid illustration of AT&T's
14 creativity when it comes to placing successive roadblocks in the way of a
15 competitor.

16 **Q. What relief does SouthEast request from the Commission?**

17 A. SouthEast asks that the Commission make SouthEast whole by ordering
18 AT&T to credit SouthEast's account beginning on July 1, 2008 (the beginning
19 of the month subsequent to the date SouthEast first began to attempt to
20 place commingled orders, and over six months after the Commission ordered
21 commingling to be made available) for the difference between the price of the
22 commingled arrangements SouthEast to which SouthEast is entitled and the

1 WLP price AT&T continued to impose. SouthEast also asks that AT&T be
2 prohibited from charging "installation" charges for lines converted from the
3 WLP to a commingled element arrangement; and finally, SouthEast asks
4 that AT&T be prohibited from refusing to provision a copper loop, nondesign,
5 simply because a particular request involves a line that currently contains
6 load coils or is currently a pair gain multiplexed system.

7 **Q. Does this conclude your testimony at this time?**

8 **A. Yes.**

