

SouthEast Telephone

July 9, 2009

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

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PUBLIC SERVICE
COMMISSION

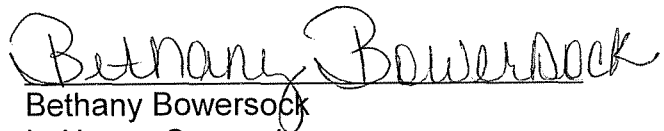
Re: SouthEast Telephone, Inc., Complainant v. BellSouthTelecommunications, Inc. d/b/a AT&T
Kentucky, Defendant
Case No. 2008-00279

Dear Mr. Derouen:

Enclosed for filing in the above captioned case is the original and ten (10) copies of SouthEast Telephone, Inc.'s submission of Rebuttal Testimony.

Thank you for your attention to this matter.

Sincerely,



Bethany Bowersock
In House Counsel
SouthEast Telephone, Inc.

Cc: Parties of Record

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE
PUBLIC SERVICE COMMISSION OF KENTUCKY

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PUBLIC SERVICE
COMMISSION

Case No. 2008-00279

REBUTTAL TESTIMONY OF
DARRELL MAYNARD

ON BEHALF OF
SOUTHEAST TELEPHONE, INC.

JULY 10, 2009

**REBUTTAL TESTIMONY OF
DARRELL MAYNARD**

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Q. Please summarize the purpose of your rebuttal testimony.

A. The purpose of this rebuttal testimony is to respond to the direct testimony of Deborah Fuentest Niziolek filed on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (“AT&T”) in this matter. Ms. Niziolek renews the argument AT&T has previously made in this matter – that, essentially, the delay in supplying SouthEast with the commingled Section 251 loop it requested with the Section 271 port, is justified because such an order is difficult to fill. Ms. Niziolek renews a second AT&T argument -- that because SouthEast placed an erroneous USOC number on an early order, AT&T was unable to discern what SouthEast desired to order – despite SouthEast’s phone calls and emails beginning on June 20, 2008, in which it repeatedly explained that it wanted to order, as replacements for AT&T’s unreasonably expensive wholesale local platform (“WLP”) product, nondesigned copper loops, commingled with the Section 271 port, to serve its customers. In further effort to justify the months during which it delayed filling SouthEast’s orders and continued to bill its much higher WLP price to SouthEast, AT&T also finds fault with SouthEast’s choice of AT&T employees - the AT&T Local Service Center employees - with whom it initially discussed its orders. This argument is baffling for at least three

1 reasons. First, AT&T's Local Service Center employees are *supposed* to be
2 responsive to customer orders, and surely should be in a position to seek
3 advice from others within the organization and relay information to
4 customers. No business should be as difficult to deal with as this. Second,
5 there is nothing strange about SouthEast's expectation that these employees
6 should be knowledgeable about AT&T's obligation to provide commingled
7 elements, since the requirement had been clear in Kentucky since issuance of
8 the *Change of Law Order*, and had allegedly been implemented in an
9 amendment to SouthEast's interconnection agreement before the order had
10 placed. Third, SouthEast has pleaded with AT&T on numerous occasions for
11 a meeting with AT&T's engineers and technical staff with whom it can
12 discuss its needs on a face to face, definitive basis. Instead, SouthEast has
13 had to go through intermediaries rather than speak to AT&T's hands-on
14 experts. For AT&T to chide SouthEast now because it allegedly failed to
15 choose the right AT&T employee to whom it was required to explain the
16 configuration of its service order is simply outrageous.

17 **Q. What is your response to the contention that AT&T's delay in filling**
18 **SouthEast's order was reasonable because the order presented**
19 **severe difficulties?**

20 A. My response is simply that AT&T's position on this issue makes no sense.
21 First of all as stated in my previous testimony, it is unreasonable on its face
22 that AT&T did not even begin to comply with the Commission's Change of

1 Law Order that was issued on December 12, 2007, until almost one year later.

2 This order was in full force and effect from that date on and at a minimum

3 AT&T should have been taking preliminary steps to offer elements in a

4 commingled arrangement before SouthEast's first order for commingled

5 elements on July 28, 2008. SouthEast should not be punished for AT&T's

6 blatant refusals to follow a Commission Order.

7 It is also unreasonable that AT&T continues to characterize SouthEast's

8 order as one for a single product that no one had ever requested before, and

9 Ms. Niziolek enlarges upon the theme at some length, claiming that a year or

10 more is required to develop a new "product" and processes necessary to

11 "support" it, that many "network groups" must engineer, design, and create a

12 new group of systems in its honor. She is clearly mistaken because

13 SouthEast's orders clearly indicate that SouthEast ordered *two* products: [1]

14 an unbundled copper loop, nondesigned, and [2] a port. Both products existed

15 for years before SouthEast ever ordered them as a commingled arrangement.

16 Neither had to be invented, developed from scratch, or even priced or added

17 to the contracts. AT&T knows what a nondesigned copper loop is, and it

18 knows what a port is, it simply refused to provide them in a commingled

19 fashion despite this Commission's Order to do so. AT&T's bureaucracy is an

20 unwieldy thing, to be sure. But, that is not SouthEast's fault. Furthermore,

21 there is simply no reason why AT&T found filling an order for these two

22 preexisting products to be so difficult, simply because they were no longer to

1 be supplied *only* at locations where SouthEast was collocated. There is even
2 less reason why SouthEast must pay much more for the months during which
3 AT&T struggled with its alleged confusion of how to place a loop with a port
4 than it would have been obliged to pay if AT&T had simply supplied the two
5 products in commingled form from the beginning. In fact, AT&T did nothing,
6 but provide billing credits for the commingled lines ordered by SouthEast
7 after it finally decided to comply with this Commission's Order.

8 **Q. What is your response to the contention that AT&T's delay in filling**
9 **SouthEast's order resulted, in part, from AT&T's alleged inability to**
10 **discern what SouthEast was ordering?**

11 A. My response is that AT&T most certainly did know what SouthEast was
12 ordering, even though SouthEast's initial order contained an erroneous
13 Uniform Service Order Code ("USOC"). AT&T's knowledge is revealed by a
14 series of emails SouthEast has previously filed in this docket in response to
15 the same argument Ms. Niziolek offers again in her testimony. That email is
16 attached as Exhibit 2 to SouthEast's Response to BellSouth
17 Telecommunications, Inc.'s Answer, filed in this case on August 13, 2008 and
18 I attach it here, as Exhibit A to my testimony, once again. After SouthEast
19 placed its order on June 19, 2008, SouthEast personnel immediately began
20 calling to ascertain the status of the order. Wally Justice, Transition
21 Manager, of SouthEast spoke directly to Eileen Mastracchio, AT&T's
22 Wholesale Support Manager, on July 8, 2008, and explained to her that

1 SouthEast wished to purchase a Section 271 port commingled with a Section
2 251 loop. On July 9, 2009, Ms. Mastracchio emailed Mr. Justice the response
3 from the AT&T “methods group,” which reads as follows: “what they want is
4 to commingle a UCL (unbundled Copper loop non design) with Commercial
5 port on one order. I told them there is no such process. *If they want to*
6 *purchase UCL on 1 order and 2nd order for the standalone port. [sic]*
7 *they can connect the 2 at their collo.*” (Emphasis added.) This is not a
8 statement of a misunderstanding of what SouthEast wanted. It is a
9 statement showing that AT&T knew exactly what SouthEast wanted, and
10 simply would not fill the order on a commingled basis. It is a statement that
11 commingled elements would not be provided as SouthEast requested, and
12 that, instead, SouthEast would have to be physically collocated in any
13 location where it requested a Section 271 port and a Section 251 loop. In
14 short, AT&T was *refusing* SouthEast rather than being *confused by*
15 SouthEast. Nevertheless, Ms. Niziolek, at page 8 of her direct testimony,
16 attempts to create the impression that AT&T did not know what SouthEast
17 wanted until August 21, 2008, over a month after SouthEast had filed its
18 Complaint in this case and almost six (6) weeks after Ms. Mastracchio
19 received an e-mail from her methods group confirming that AT&T knew
20 exactly what SouthEast was attempting to order. Therefore, it is
21 unreasonable for SouthEast to accept the explanation that AT&T could not

1 complete SouthEast's order for commingled elements because it did not
2 understand the arrangement we were requesting.

3 **Q. Do you have any additional reason to believe that AT&T's delay is**
4 **more properly characterized as a refusal to fill the orders than as an**
5 **inability to fill the orders despite good faith attempts?**

6 A. Yes, I do. First, AT&T is a large, sophisticated company whose personnel
7 understand the business in which AT&T is a major player. For that reason
8 alone, the claims of "confusion" ring hollow. In addition, AT&T has opposed
9 the provision of commingled Section 251 and Section 271 elements, and is in
10 fact still arguing that it is not legally required to provide them. AT&T
11 appealed the Commission's decision requiring commingling, among other
12 things, in PSC Case No. 2004-00427, *In the Matter of Petition of BellSouth*
13 *Telecommunications, Inc. to Establish Generic Docket to Consider*
14 *Amendments to Interconnection Agreements Resulting from Changes of Law*
15 (Dec. 12, 2007) (the "Change of Law Order"). That case was argued in
16 August 2008, but the court's opinion has not yet been entered. AT&T has
17 also appealed the Commission's commingling decision in PSC Case No. 2006-
18 00316, *Petition of SouthEast Telephone, Inc. for Arbitration of Certain Terms*
19 *and Conditions of Proposed Agreement with BellSouth Telecommunications,*
20 *Inc. Concerning Interconnection Under the Telecommunications Act of 1996.*
21 It is clear that AT&T did not (and does not) wish to provide the commingled
22 arrangements SouthEast has requested and hopes that the Commission's

1 decisions requiring those arrangements will be overturned. To date, though,
2 they have not been, and the evidence indicates that, in June and July of 2008,
3 AT&T simply had not yet been convinced that providing commingled
4 elements was something it had to do, as evidenced by an e-mail from Jennifer
5 Bracken of AT&T dated July 10, 2008 and attached hereto as Exhibit B. Ms.
6 Bracken's e-mail states as follows: "The issues addressed on commingling
7 within the COL and the Joint Petitioners arbitration all focused on whether
8 or not to allow CLECs to be able to commingle Section 251 UNEs with 271
9 elements. AT&T's position is that this should not be allowed since it virtually
10 recreates UNE-P on some level. AT&T will allow SouthEast to commingle
11 251 UNEs with 271 elements as required by the COL order, but AT&T will
12 not perform the actual attaching for the CLEC." Clearly, AT&T still believed
13 7 months after the Change of Law Order, that it was not required to follow
14 the Commission's ruling. It wasn't until the Commission conducted an
15 informal conference on September 11, 2008, that AT&T changed its tune and
16 indicated that they did not question their responsibility to commingle
17 elements. However, it was not until December 1, 2008, that AT&T began,
18 reluctantly, to work with SouthEast to fill orders for commingled products, at
19 least to the extent that it would fill *some* of the orders (in a financial sense
20 only) and would provide bill credits for *some* of the months that elapsed after
21 SouthEast submitted its orders. It is absurd to expect SouthEast and this
22 Commission to believe that AT&T's interim solution that SouthEast place

1 orders the same exact way that it has for years while receiving billing credits
2 for the price difference took AT&T this long to complete. But, Ms.
3 Mastracchio's July 2008 email to SouthEast, stating that it could only buy
4 the port and the loop in separate pieces and "connect" them itself at its "collo"
5 must be taken at face value. At the time, that email expressed AT&T's
6 official position, not helpless confusion and inability to comply. Faced with
7 that intransigence, despite the new amendment to its interconnection
8 agreement that allegedly brought the parties' agreement into compliance
9 with the Commission's *Change of Law Order*, SouthEast filed its Complaint
10 with the Commission.

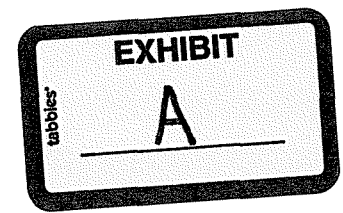
11 **Q. Is there anything in your previous experience in ordering a copper**
12 **loop, nondesign when it will be combined with SouthEast's own port**
13 **that prepared you for the delays you've experienced after you have**
14 **ordered that same copper loop, nondesign when you're also ordering**
15 **a \$271 port to commingle with it?**

16 A. Absolutely not. SouthEast has ordered at least 1,740 nondesigned copper
17 loops to combine with SouthEast's own port, and in those instances, we have
18 encountered no difficulty or delay at all. It is painfully clear that AT&T's
19 sudden discovery that it needs to review each order and determine if
20 "qualifiers" prohibit supplying SouthEast with a copper loop, nondesign, is a
21 result of AT&T's desire to limit SouthEast's ability to obtain commingled
22 elements. Indeed, this entire controversy has served as a vivid illustration of

1 AT&T's creativity when it comes to placing successive roadblocks in the way
2 of a competitor.

3 **Q. Does this conclude your rebuttal testimony?**

4 **A. Yes.**



-----Original Message-----

Date: Wed, 9 Jul 2008 14:45:59 -0400

From: "MASTRACCHIO, EILEEN G (ATTSNET)" <eg2483@att.com>

To: "Wally Justice" <wally.justice@setel.com>

cc: <oma.miller@setel.com>, "CROSSWHITE, CATHERINE L (ATTOPS)" <cc1037@att.com>,

"WASHINGTON, DARRYL (ATTOPS)" <dw5490@att.com>

Subject: RE: Commingled Order Assistance

Wally,

I've contacted the methods group and this the response:

what they want is to commingle a UCL (unbundled Copper loop non design) with Commercial port on one order. I told them their is no such process. If they want to purchase UCL on 1 order and 2nd order for the standalone port. they can connect the 2 at their collo

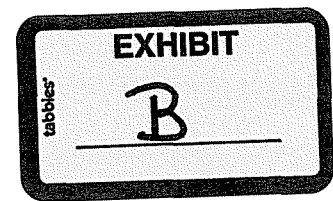
If you have further questions, please contact your SrCAM Cathy Crosswhite [205-321-4758] who is cc'd on this email.

Eileen Mastracchio

Wholesale Support Manager

AT&T Industry Markets

Tel #: 203 771-0281



-----Original Message-----

From: BRACKEN, JENNIFER (ATTSWBT) [mailto:jb2560@att.com]
Sent: Thursday, July 10, 2008 3:45 PM
To: Liz Thacker; Beth Bowersock; Eversole, Deborah
Subject: Commingling Issue

Hi All,

I reviewed the rejected order and spoke with product. It seems that SETel's intent in Attachment 2 section 1.4.1.1 - 1.4.1.3 was for AT&T to do the actual physical work of attaching the elements. If that is the case, AT&T disagrees with this position. The issues addressed on Commingling within the COL and the Joint Petitioners arbitration all focused on whether or not to allow CLECs to be able to commingle Section 251(c)(3) UNEs with 271 elements. AT&T's position is that this should not be allowed since it virtually recreates UNE-P on some level. The Commission disagreed with AT&T's position and ordered that CLECs be allowed to Commingle 251(c)(3) UNEs with 271 elements. As a result, complying language allowing UNEs to be commingled with 271 elements was drafted into the interconnection agreement. From SETel's order and the language proposal, it appears that SETel is requesting that AT&T do the actual physical work of attaching the elements. AT&T will allow SETel to commingle 251(c)(3) UNEs with 271 elements as required by the COL order, but AT&T will not perform the actual attaching for the CLEC. SETel would order the circuits on 2 separate orders and AT&T will provision them to the Collocation Arrangement.

Jennifer