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**PUBLIC SERVICE
COMMISSION**

September 14, 2009

VIA OVERNIGHT MAIL

Mr. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

Re: SouthEast Telephone, Inc., Complainant v. BellSouth
Telecommunications, Inc. d/b/a AT&T Kentucky, Defendant
KPSC 2008-00279

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case are the original and five (5) copies of Motion of BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky and Response of BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky to SouthEast Telephone Inc.'s Post-Hearing Brief.

Sincerely,


Mary K. Keyer

cc: Parties of Record

Enclosures

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SOUTHEAST TELEPHONE INC.)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2008-00279
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
D/B/A AT&T KENTUCKY)	
)	
DEFENDANT)	

**MOTION OF BELLSOUTH TELECOMMUNICATIONS, INC.,
D/B/A AT&T KENTUCKY**

BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky (“AT&T Kentucky”), by counsel, respectfully requests leave to file the attached response to the portion of SouthEast Telephone Inc.’s post-hearing brief (“SouthEast Brief”) that references a complaint filed by Saturn Telecommunication Services, Inc. with the Federal Communications Commission.¹

In its post-hearing brief filed on August 28, 2009, SouthEast attached selected portions of the *Saturn Complaint* to attempt to discredit AT&T Kentucky’s witness regarding her testimony that SouthEast’s request to combine an unbundled copper loop – non-design (“UCL-ND”) with a port was an “unnatural” combination and one that AT&T Kentucky would not have anticipated, and that in AT&T’s 22-state region no other competitive local exchange carrier, other than SouthEast, has requested a loop/port combination that was not already made available by AT&T Kentucky at the time the

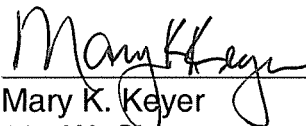
¹ *In the Matter of Saturn Telecommunication Services, Inc. v. BellSouth Telecommunications, Inc.*, FCC File No. EB-09-MD-008 (Complaint dated July 20, 2009) (“*Saturn Complaint*”).

Change of Law Order was issued.² SouthEast has submitted the selected portions of Saturn's complaint to prove that the loop/port combination requested by SouthEast was not an "unnatural" one and was one that had been ordered by another CLEC, Saturn. This is simply not true.

Saturn's complaint does not involve a *loop/port* commingled arrangement as was requested by SouthEast and that is at issue in this case before this Commission. In addition, the *Saturn Complaint* and the allegations contained therein are hearsay³ and inadmissible⁴, and do not prove what SouthEast is using them to prove.

WHEREFORE, AT&T Kentucky respectfully requests that the Commission grant its request for leave to file the attached response to the aforementioned issue contained in SouthEast's post-hearing brief.

Respectfully submitted,



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COUNSEL FOR BELL SOUTH
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² *In the Matter of: Petition of BellSouth Telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*, Case No. 2004-00427 (Ky. PSC Order Dec. 12, 2007).

³ Kentucky Rules of Evidence 801(c) ("a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.").

⁴ KRE 802.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SOUTHEAST TELEPHONE INC.)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2008-00279
)	
BELLSOUTH TELECOMMUNICATIONS, INC.,)	
D/B/A AT&T KENTUCKY)	
)	
DEFENDANT)	

**RESPONSE OF BELLSOUTH TELECOMMUNICATIONS, INC.,
D/B/A AT&T KENTUCKY TO SOUTHEAST TELEPHONE INC.'S
POST-HEARING BRIEF**

BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky (“AT&T Kentucky”), by counsel, responds to the portion of SouthEast Telephone Inc.’s post-hearing brief (“SouthEast Brief”) that references a complaint filed by Saturn Telecommunication Services, Inc. with the Federal Communications Commission.¹ In its post-hearing brief filed on August 28, 2009, SouthEast Telephone attached selected portions of the *Saturn Complaint* to attempt to prove that AT&T Kentucky’s witness was not being truthful when she testified that SouthEast’s request to combine an unbundled copper loop – non-design (“UCL-ND”) with a port was an “unnatural” combination and one that AT&T Kentucky would not have anticipated.² SouthEast’s reference to the selected portions of the *Saturn Complaint* also appeared to be an attempt to further prove that AT&T

¹ *In the Matter of Saturn Telecommunication Services, Inc. v. BellSouth Telecommunications, Inc.*, FCC File No. EB-09-MD-008 (Complaint dated July 20, 2009) (“*Saturn Complaint*”).

² SouthEast Brief at 15, *citing* Hearing Testimony of Deborah Fuentes Niziolek, Tr. at 123.

Kentucky's witness was not being truthful when she testified, "To this day, *no CLEC, except for SouthEast Telephone*, has requested any loop/port arrangement commingled or otherwise, other than what AT&T Kentucky had available at the time the Change of Law order was issued."³ SouthEast states that "interestingly" Saturn's complaint filed with the FCC on July 20, 2009, alleges that Saturn "also tried to order the copper loop, nondesigned in a commingled arrangement"⁴ SouthEast has submitted these selected portions of Saturn's complaint to prove that the loop/port combination requested by SouthEast was not an "unnatural" one and was one that had been ordered by another CLEC, Saturn. This is simply not true.

Saturn's complaint does not involve a UCL-ND *loop/port* commingled arrangement as was requested by SouthEast, but allegedly involves the commingling of a loop with special access transport and the technical feasibility of which type of loop (UCL-ND, SL-1, and SL-2) can be combined with that special access transport. Such an arrangement is not the same as a UCL-ND commingled with a switch port as requested by SouthEast.

In addition to the fact that the *Saturn Complaint* is irrelevant and does not involve a similar commingled arrangement as requested by SouthEast, it and the allegations contained therein are hearsay⁵ and are inadmissible.⁶ SouthEast has taken out of context selected allegations made in a portion of Saturn's complaint (without having any of the facts) in an attempt to supplement the record in this case with hearsay information for the purpose of discrediting Ms. Niziolek's undisputed testimony that, in

³ SouthEast Brief at 15, *citing* Rebuttal Testimony of Deborah Fuentes Niziolek at 2 (emphasis added).

⁴ SouthEast Brief at 15.

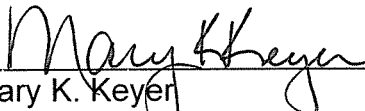
⁵ Kentucky Rules of Evidence 801(c) ("a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.")

⁶ KRE 802

AT&T's 22-state region, no CLEC other than SouthEast had requested "any *loop/port* arrangement commingled or otherwise other than what AT&T Kentucky had available at the time the Change of Law order was issued."⁷ The *Saturn Complaint* contains mere allegations, which even if true, do not prove what SouthEast is using them to prove. Saturn in fact has *not* requested a UCL-ND in a loop/port commingled arrangement, as a review of the *Saturn Complaint* would clearly reflect, and Ms. Niziolek's testimony remains accurate and undisputed.

Based on the foregoing, the Commission should disregard that portion of SouthEast's Brief that refers to the *Saturn Complaint* as being irrelevant, without merit, and inadmissible hearsay.

Respectfully submitted,



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⁷ Niziolek Rebuttal Testimony at 2 (emphasis added).

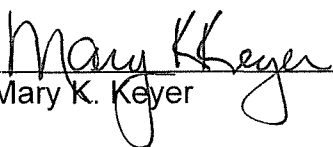
CERTIFICATE OF SERVICE PSC 2008-00279

It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by U.S. mail this 14th day of September, 2009.

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