

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)	

O R D E R

On September 28, 2009, SouthEast Telephone, Inc. ("SouthEast") petitioned the United States Bankruptcy Court for the Eastern District of Kentucky for Chapter 11 bankruptcy protection, identified by Case Number 09-70731. By Orders dated October 21, 2009, December 16, 2009, and February 8, 2010, the Commission approved and adopted Agreed Orders submitted jointly by SouthEast and the defendant, BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky"), to stay this proceeding for 60 days. The last Agreed Order for a stay of this proceeding, as submitted by the parties, expired on February 28, 2010. No further motions or Agreed Orders have been filed by the complainant or the defendant, either jointly or separately.

Federal statute 11 U.S.C. § 362, titled "Automatic Stay," provides:

- (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302 or 303 of this title . . . operates as a stay, applicable to all entities of --
- (1) the commencement or continuation, including the issuance or employment of a process, of a judicial, **administrative or other action** or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title

Emphasis added.

In this proceeding, SouthEast initiated the action against AT&T Kentucky to seek refunds or billing credits to its account for the provisioning of certain commingled unbundled network elements and combinations of those elements with certain wholesale services and elements, in addition to other network service arrangements. The Commission's Final Order in this proceeding would result in a financial determination against either SouthEast or AT&T Kentucky.¹ Although SouthEast is the complaining party in this proceeding, final resolution of this case could result in SouthEast being categorized as a debtor to AT&T Kentucky for certain orders. Federal bankruptcy statute 11 U.S.C. § 362(a)(1) provides that automatic stays must be given to the continuation of administrative actions for the recovery of claims against the debtor.²

¹ For example, AT&T Kentucky could be compelled to provide certain refunds or credits or SouthEast could be ordered to render payments to AT&T Kentucky for certain wholesale orders.

² The Commission notes that SouthEast filed for Chapter 11 protection after the conclusion of the formal hearing in this proceeding but prior to the Commission's issuance of a Final Order, which would have included findings of fact and conclusions of law as to SouthEast's claim of entitlement to credits or refunds from AT&T Kentucky. In this proceeding, AT&T Kentucky consistently denied that SouthEast was entitled to any refunds or credits and that certain bills for wholesale services are due and owing from SouthEast. See Transcript of the July 14, 2010 Formal Hearing at 73, lines 7-14 (testimony of Darrell Maynard, President of SouthEast).

The Public Service Commission is an administrative agency with the statutory power to investigate the methods and practices of utilities and compel them to conform to state law and any applicable Commission Orders.³ A finding and Order of the Commission,

[W]hile not a judgment with the attributes of a final judgment or decree of a judicial tribunal, has the effect of a legislative act as to the parties to the proceeding and is very far reaching in its operation. Broadly speaking, the [O]rder of the Commission is conclusive when made within the scope of its authority and binding upon all parties except as a review thereof may be had by the courts.⁴

As this administrative action could potentially result in a final determination as to a balance owed by SouthEast to AT&T Kentucky, SouthEast qualifies as a potential “debtor” and the Commission finds that 11 U.S.C. § 362(a)(1) is applicable. Therefore, this action must continue to be stayed pending the conclusion of SouthEast’s Chapter 11 bankruptcy proceeding. The Commission hereby finds that there shall be a continued stay of this proceeding until SouthEast’s Chapter 11 bankruptcy proceeding is resolved.

IT IS HEREBY ORDERED that:

1. This proceeding shall continue to be stayed until such time as SouthEast’s Chapter 11 bankruptcy proceeding is resolved.
2. SouthEast shall provide affirmative notice to the Commission upon the dismissal or closure of the bankruptcy proceeding by order of the Court.
3. This proceeding shall remain on the Commission’s docket.

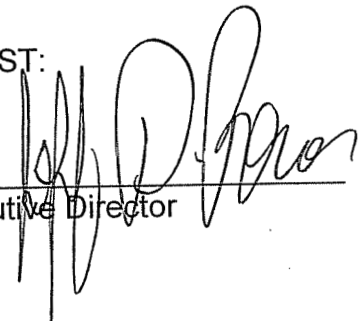
³ KRS 278.040(3).

⁴ Frankfort Natural Gas Co. v. Frankfort, 123 S.W. 2d 270, 272 (Ky. App. 1938).

By the Commission

ENTERED
MAR 19 2010 *M*
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2008-00279

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