



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

RECEIVED

OCT 09 2008

PUBLIC SERVICE
COMMISSION

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

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

October 9, 2008

Ms. Stephanie L. Stumbo
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 Ms. Stumbo:

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

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

RECEIVED

OCT 09 2008

PUBLIC SERVICE
COMMISSION

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

REPLY OF SOUTHEAST TELEPHONE, INC.
IN SUPPORT OF MOTION FOR INTERMEDIATE RELIEF

SouthEast Telephone, Inc. ("SouthEast"), by counsel, for its Reply in Support of Motion for Intermediate Relief, states as follows:

* * *

SouthEast explained in its Motion for Intermediate Relief, filed in this docket on September 25, 2008, that its established legal right to commingled elements under the parties' amended interconnection agreement and the Commission's Orders¹ entitles it, *at the very least*, to the rates it would pay for those commingled elements rather than the dramatically higher wholesale local platform ("WLP") rates it currently pays BellSouth Telecommunications, d/b/a AT&T Kentucky ("AT&T"). SouthEast has requested that the Commission order AT&T to provide bill credits for the difference in those rates partially to assuage SouthEast's ongoing injury resulting from AT&T's alleged inability to fill SouthEast's commingling orders. The

¹ See, e.g., 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* (December 12, 2007 (the "Change of Law Order").

commingling orders. The equitable and legal justification for such *interim relief* was fully described in SouthEast's motion, and need not be reiterated here.

However, SouthEast believes it is imperative to respond briefly to three arguments AT&T makes in response to SouthEast's motion.

First, AT&T asserts that, if the Commission grants SouthEast's motion, it would be impermissibly "rewriting" the parties' Section 271 agreement that provides for the WLP, violating both contract law and the jurisdictional parameters restricting the Commission. No redder a herring can be imagined. SouthEast asks the Commission to give at least *some force* and effect to the parties' interconnection agreement, which provides for the commingling arrangement SouthEast requests, which is (supposedly) in force, and which is unquestionably within the jurisdiction of the Commission.

Second, AT&T attempts to defend its alleged inability to fill SouthEast's commingling orders by claiming that the commingling arrangement SouthEast requests is a "product" in itself, rather than a combination of products *already offered*, and comparing itself to a sandwich shop that is required to "make every possible sandwich combination before a customer ever placed an order." [AT&T Response to Motion for Intermediate Relief, at 3]. With respect, the more appropriate analogy with respect to sandwich shops is a situation in which a customer orders a sandwich (that is on the menu) with chips (that are also on the menu) and the shop refuses to put the sandwich and the chips on the same plate. Of course, there is no law requiring a sandwich shop to sell chips and sandwiches together, and AT&T is not a sandwich shop. However, one may reasonably assume that if a sandwich shop violated a law that directly applied to it – such as keeping the premises reasonably clean – it would not be given up to a year to figure out how to use a broom and a mop. The law would be enforced.

Finally, SouthEast feels constrained to note once again that AT&T's continued insistence that it did not know what SouthEast wanted until August, and that SouthEast refused to "discuss the particulars" of what it wanted [A&T Response to Motion for Intermediate Relief, at 2] makes absolutely no sense. The email sent to SouthEast by AT&T on July 9 [Exhibit 2 to SouthEast's Response to AT&T's Answer], indicated that AT&T understood precisely what SouthEast wanted as of that date, at the very latest:

"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."

It also, of course, along with other emails in the string, shows that SouthEast was very actively "discussing the particulars" of its orders. Indeed, SouthEast was very anxious to have its orders filled, and went to AT&T employee after AT&T employee in attempts to obtain a meaningful dialogue.

For the foregoing reasons, and for those stated in its Motion for Interim Relief, SouthEast reiterates its request that the Commission enforce the parties' interconnection agreement by ordering AT&T to issue bill credits to give at least some practical effect to SouthEast's lawful entitlement to the commingling arrangement it has repeatedly requested.

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
deborah.eversole@skofirm.com
douglas.brent@skofirm.com

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

Counsel for SouthEast Telephone, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on this 9th day of October, 2008, a full and complete copy of the foregoing, with attachment, 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 and 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.