

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF SOUTHEAST TELEPHONE, INC.,)	
FOR ARBITRATION OF CERTAIN TERMS AND)	CASE NO.
CONDITIONS OF PROPOSED AGREEMENT)	2006-00316
WITH BELL SOUTH TELECOMMUNICATIONS,)	
INC. CONCERNING INTERCONNECTION)	
UNDER THE TELECOMMUNICATIONS ACT OF)	
1996)	

O R D E R

This case is before the Commission on the petition for arbitration of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (“AT&T Kentucky”) and SouthEast Telephone, Inc. (“SouthEast”) and is now ripe for final disposition. On March 28, 2007, the Commission issued an Order addressing the 5 issues presented by the parties to this arbitration. The matters included: (1) the monthly recurring rate for each zone for voice grade local loop; (2) a monthly recurring rate for the port component of a platform combination; (3) rates, terms, and conditions governing AT&T Kentucky’s offering of unbundled network element-loop (“UNE-L”) interconnected with SouthEast’s network adjacent meet point; (4) rates, terms, and conditions regarding dispatched/no-trouble-found charges; and (5) requirements, if any, for AT&T Kentucky to provide data on the location and type of network facilities and number of customer lines and geographic service area of such facilities.

AT&T Kentucky requested rehearing of 2 issues. AT&T Kentucky asked that the Commission reconsider the issue regarding the monthly recurring rate

applicable to the port switching element mandated pursuant to 47 U.S.C. § 271 (“Section 271”), identified by the parties as Issue A-3. AT&T Kentucky also requested rehearing regarding terms and conditions related to the offering of UNE-L interconnected to SouthEast’s network adjacent meet point, which the parties have identified as Issue A-4. SouthEast opposed rehearing of these matters.

The Commission, on May 10, 2007, granted rehearing of Issue A-3, regarding the monthly recurring rate for the port component of a platform combination. Rehearing was granted for the purpose of placing the matter in abeyance pending a ruling by the United States District Court for the Eastern District of Kentucky on AT&T Kentucky’s appeal of the Commission’s Order in Case No. 2005-00519¹ and Case No. 2005-00533.² Rehearing of Issue A-4, regarding SouthEast’s interconnection arrangement at an “adjacent meet point,” was denied.

On September 18, 2007, the District Court issued an Opinion and Order in the matter for which this case was held in abeyance.³ Therein, the District Court held that the Commission lacks authority to act pursuant to Section 271 of the Telecommunications Act of 1996.

¹ Case No. 2005-00519, BellSouth Telecommunications, Inc.’s Notice of Intent to Disconnect SouthEast Telephone, Inc. for Non-Payment (Ky. PSC Aug. 16, 2006).

² Case No. 2005-00533, SouthEast Telephone, Inc. v. BellSouth Telecommunications, Inc., (Ky. PSC Aug. 16, 2006).

³ Opinion and Order, BellSouth Telecommunications, Inc. v. Kentucky Public Service Commission, et al., Civil Action No. 06-65-KKC, slip copy, 2007 WL 2736544, United States District Court, Eastern District of Kentucky (September 18, 2007).

On November 15, 2007, AT&T Kentucky requested that the Commission set aside its original Order with respect to the rate for local switching-related elements and issue an Order consistent with the District Court's ruling. On January 25, 2008, SouthEast filed its response to AT&T Kentucky's request, including two motions. First, SouthEast moved to incorporate into the parties' interconnection agreement certain key decisions reached by the Commission in Case No. 2004-00427.⁴ Second, SouthEast moved to enforce the Commission decisions regarding AT&T Kentucky's obligations to provide adjacent meet-point interconnection (Issue A-4) and regarding AT&T Kentucky's obligation to furnish nondiscriminatory access to information concerning its network infrastructure necessary for such collocation (Issue A-9).

SouthEast urges the Commission to reject AT&T Kentucky's request to set aside the Commission's decisions in the March 28, 2007 Order regarding Issue A-3, the monthly recurring rate for the port component of a platform combination. SouthEast gives three rationales in support of its opposition: (1) the District Court decision is not yet final and may be subject to appeal; (2) the Federal Communications Commission ("FCC") may rule on the just and reasonable rates for AT&T Kentucky's Section 271 competitive checklist elements in the near future, and, if so, this Commission's factual determinations on this issue should help the FCC build its record; and (3) the Commission has concluded in the Change of Law Order

⁴ Case No. 2004-00427, Petition of BellSouth Telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law, Final Order dated Dec. 12, 2007) ("Change of Law Order"), reconsideration denied (Jan. 18, 2008).

that it has authority to affirm its findings on this issue pursuant to state law and 47 U.S.C. § 252.

SouthEast additionally has moved the Commission to require that the determinations in the Change of Law Order regarding service quality standards and enforcement mechanisms, commingling, line conditioning, and line sharing be incorporated into its interconnection agreement with AT&T Kentucky. SouthEast also contends that AT&T Kentucky has failed to comply with the Commission's March 28, 2007 Order, particularly with respect to Issue A-4 (adjacent meet-point interconnection) and Issue A-9 (data regarding the locations of remote terminal and subtending customers). Noting that AT&T Kentucky and SouthEast have not executed a final interconnection agreement, SouthEast moves the Commission to order AT&T Kentucky to execute a conforming interconnection agreement with SouthEast and to comply immediately with its obligation to furnish, on terms no less favorable than the terms and conditions under which AT&T Kentucky provides that information to itself, ordering and preordering information to SouthEast, including the existence, type, and location of any electronic or other equipment on the loop, which includes remote concentration devices and feeder/distribution devices.

In AT&T Kentucky's reply to SouthEast's response and motions, AT&T Kentucky reiterated that the Commission should issue an Order that sets aside the Commission's ruling that it has the authority under Section 271 to establish a switching or port rate and denies SouthEast's motions. SouthEast filed its reply on February 25, 2008.

The Commission first addresses AT&T Kentucky's motion to set aside the Commission's ruling that it has the authority under Section 271 to establish a switching or port rate. In the March 28, 2007 Order, the Commission relied on Section 271 to set a rate for the "port component of the loop switching transport group of elements."⁵ In doing so, the Commission held that "[t]he FCC has not pre-empted this Commission from enforcing the requirements of § 271" and that the "Commission's jurisdiction extends to pricing disputes regarding those elements required pursuant to § 271."⁶ Additionally, the Commission's adoption of SouthEast's proposed "port" rate was based on "the Commission's determination that pricing disputes for § 271 elements are legitimately within the purview of this Commission."⁷ The Commission's underlying tenet that it has jurisdiction over Section 271 enforcement and over Section 271 pricing was rejected by the District Court.

We find unpersuasive SouthEast's arguments that the District Court Opinion is not yet final and could be appealed, that the ruling is relevant to a "potential" upcoming FCC proceeding, and that because the Commission has jurisdiction to set these rates under state law, it should use the rates adopted in the arbitration proceeding. Even though the District Court Opinion is not final, the issue the District Court left open may not affect this decision, and the time for appeal for any other

⁵ March 28, 2007 Order at 5.

⁶ Id. at 6-7.

⁷ Id. at 7.

issues has passed. The Commission's acknowledgement of the District Court's decision will not influence whether SouthEast makes an application to the FCC for determination of a port rate pursuant to Section 271. The Commission determined in the Change of Law Order that it had authority under state law to set the switching rate and, accordingly, set the rate at the market rate, not the rates approved within this arbitration case. Accordingly, the Commission has no choice but to set aside its ruling on Issue A-3.

The Commission turns to SouthEast's motion to incorporate into the parties' interconnection agreement certain decisions contained in the Change of Law Order and its motion to enforce the Commission decisions in this arbitration proceeding regarding AT&T Kentucky's obligations to provide adjacent meet-point interconnection and to furnish nondiscriminatory access to information concerning its network infrastructure necessary for such collocation. AT&T Kentucky has not objected to the inclusion of any of these items in the parties' interconnection agreement and has not indicated that it would object to such items in the interconnection agreement or refuse to provide the information or adjacent meet point interconnection. There is no need for the Commission to reorder AT&T Kentucky in this proceeding to include these items, as AT&T Kentucky is already obligated to make those inclusions and AT&T Kentucky has given no indication to the contrary that it will not. Therefore, SouthEast's motion to incorporate and motion to enforce should both be denied as moot. However, should AT&T Kentucky not include in the parties' interconnection agreement the items listed above, or fail to provide adjacent meet point interconnection or the network infrastructure

information, SouthEast should notify the Commission of such a failure and the Commission will address it in turn.

IT IS THEREFORE ORDERED that:

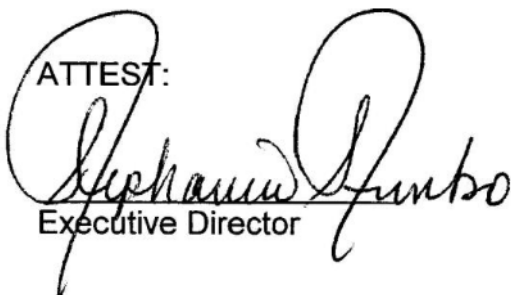
1. The decision on Issue A-3 in the March 28, 2007 Order is set aside.
2. SouthEast's motion to incorporate is denied as moot.
3. SouthEast's motion to enforce is denied as moot.
4. Within 30 days of the date of this Order, SouthEast and AT&T Kentucky shall file their interconnection agreement incorporating Commission decisions.
5. This is a final and appealable Order.

Done at Frankfort, Kentucky, this 2nd day of May, 2008.

By the Commission

Commissioner Clark Abstains.

ATTEST:


Executive Director