

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

7/15/03  
6/10/03 2003

<b>Request of SouthEast Telephone, Inc., for</b>	)	
<b>the Reconsideration of the Triennial</b>	)	<b>CASE NO.</b>
<b>Review Order Regarding Local Circuit</b>	)	<b>2003-00347</b>
<b>Switching for DS1 Enterprise Customers</b>	)	

**PETITION FOR REQUEST FOR RECONSIDERATION**

Comes now SouthEast Telephone, Inc., (“SouthEast Telephone”), by counsel, and in response to the Public Service Commission’s Order in the matter of Review of Federal Communications Commission’s Triennial Review Order Regarding Switching for DS1 Enterprise Customers, hereby requests this Commission to petition the Federal Communications Commission (“FCC”) for waiver of the “no impairment finding” with regard to local circuit switching for enterprise customers.

**I. SOUTHEAST TELEPHONE WILL BE IMPAIRED WITHOUT ACCESS TO LOCAL CIRCUIT SWITCHING FOR THE ENTERPRISE MARKET**

SouthEast Telephone currently provides telephone service utilizing DS1 technology to five (5) rural business customers who fit within the FCC’s definition of the “enterprise market” customer class. If the Public Service Commission (“PSC”) does not petition the FCC for waiver of the “no impairment finding,” SouthEast Telephone will suffer economically from the loss of these customers.

SouthEast Telephone is also at risk of losing future revenue that could potentially be earned from aggressively marketing telecommunications services utilizing DS1 technology to enterprise customers throughout the rural areas of Kentucky.

If the FCC’s finding of “no impairment” stands, SouthEast Telephone will be forced out

of the Enterprise Market. In order to service existing customers and to compete for future revenues, the only alternative available to SouthEast would be self-deployment of regional switching facilities throughout the rural market. Here, the FCC's reasoning is tautological in that in order to *gain maximum profits from Enterprise customers*, a CLEC must endure the extreme economic hardship of self-deployment of expensive switching equipment. This "alternative" places an undue economic burden upon the already struggling CLECs while the ILECs reap the benefits of first-mover advantages. According to FCC's own reasoning in the Triennial Review Order, first mover advantages can create absolute cost disadvantages for CLECs, and indeed if large enough, can act as a barrier to entry into the market.<sup>1</sup>

While it is apparent that FCC is cognizant of the granularity of analysis that is required within the mass market, they seem to be misinformed as to lack of competition within the enterprise market in rural areas. Without CLEC competition within the more sparsely populated rural communities, business customers will also suffer. By inadvertently allowing ILECs to be the only provider of DS1 switching, the FCC is unwittingly acting contrary to the purpose of the Telecommunications Act of 1996 in promoting competition and better serving the telecommunications consumer.

## **II. ALL KENTUCKY CLECs WILL BE IMPAIRED WITHOUT ACCESS TO LOCAL CIRCUIT SWITCHING FOR THE ENTERPRISE MARKET**

The purpose of the Telecommunications Act of 1996 is "[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications

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<sup>1</sup>*Triennial Review Order*, released August 21, 2003. ¶89.

technologies.”<sup>2</sup> Since the passage of this Act, competition in the telecommunications sector nationwide has grown dramatically, however, competition within Kentucky has not grown as rapidly.

Nationwide CLECs reported only 24.8 million of the approximately 188 million nationwide end-user switched access lines in service at the end of the December 2002. Within our own borders, Kentucky CLECs account for only 92,483 of the 2,192,796 end-user switched access lines while ILECs garner 2,100,313 of the same type of lines. Thus, the average penetration rate of CLECs nationwide was 13%, however Kentucky lagged far behind at only a 4% penetration rate.<sup>3</sup> In fact, without the metropolitan areas of Lexington, Louisville and Northern Kentucky, the CLEC penetration rate would be much lower.

### **III. SOUTHEAST TELEPHONE REQUESTS RECONSIDERATION OF THE “NO IMPAIRMENT” FINDING FOR THE RURAL AREAS OF KENTUCKY**

Statistics show that at a 4% penetration rate, competition within Kentucky has not yet met the nationwide average of 13%. Without the metropolitan areas, the penetration rate of CLECs is diminished greatly. Rural CLECs in particular are at a great disadvantage due to the sparsely populated regions within their operating areas. In order to give the Commission the exact penetration rate for Kentucky CLECs excluding the metropolitan areas, further expensive professional analysis would have to be conducted. Since the “impairment analysis” is to be conducted on a *granular basis*, acquiring the data necessary to provide the Commission with information on which to base the Petition for Reconsideration would be economically

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<sup>2</sup>*Telecommunications Act of 1996*

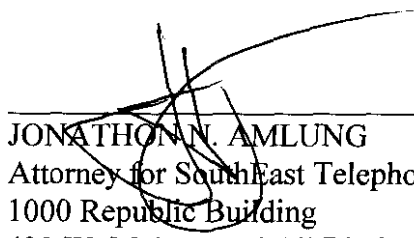
<sup>3</sup>*Local Telephone Competition: Status as of December 31, 2002* (June 2003), available at [www.fcc.gov/web/stats](http://www.fcc.gov/web/stats).

burdensome on the already financially strapped rural CLECs. The information needed to conduct a *granular* analysis is not available by the conventional means such as FCC data included in the *Local Competition Report*. This is due to the fact that the FCC has not previously conducted its research on such a *granular* basis and is relying upon the individual state public utility commissions to collect the data and make the critical determinations.

According to the FCC, “state commissions are uniquely positioned to evaluate the local market conditions and determine whether DS1 enterprise should be granted access to unbundled incumbent LEC circuit switching.”<sup>4</sup>

**WHEREFORE**, for the foregoing reasons, SouthEast Telephone requests the Commission to petition the FCC for a waiver of the “no impairment finding” with regard to local circuit switching for enterprise customers for the rural areas of Kentucky.

Respectfully submitted,



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<sup>4</sup>Triennial Review Order, ¶ 455.