COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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

MOTION BY SOUTHEAST TELEPHONE, INC.

Southeast Telephone, Inc. ("SouthEast"), by and through its counsel, hereby files the instant Motion for a Commission Order directing BellSouth Telecommunications, Inc., ("BellSouth") to continue to accept and process new unbundled network element ("UNE") orders until SouthEast and BellSouth have completed the negotiations required by the change of law provisions of the Parties interconnection agreement ("Agreement") in order to address the FCC's recent Triennial Review Remand Order ("*TRRO*").[1] Further, SouthEast requests that the Commission Order BellSouth to comply with the competitive checklist in Section 271 of the federal Telecommunications Act of 1996 ("the Act") and continue to provide the former UNEs at "just and reasonable" rates.

INTRODUCTION

The current proceeding is a result of a November 1, 2004, BellSouth petition requesting a generic docket to "determine what changes recent decisions from the FCC require in existing approved interconnection agreements between BellSouth and competitive local exchange carriers ('CLECs') in Kentucky." BellSouth petition at 1. This petition is evidence of the fact that, at

[1] *Triennial Review Remand Order, Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* FCC 04-290 (Feb. 4, 2005).

least in theory, BellSouth understands that changes in law should lead to negotiations between the Parties that result in a mutually acceptable Agreement or an appropriate amendment to the existing interconnection agreement.

BELLSOUTH'S REFUSAL TO ENGAGE IN "GOOD FAITH NEGOTIATIONS"

The FCC released the *TRRO* on February 4, 2005, determining on a nationwide basis that ILECs are not obligated to provide unbundled local switching pursuant to Section 251(c)(3) of the Act. One (1) week later on February 11, BellSouth issued Carrier Notification SN91085039 which proclaimed, "[t]o be clear, in the event one of the above options [Commercial Agreement] is not selected and a CLEC submits a request for new UNE-P on March 11, 2005 or after, the order will be returned to the CLEC for clarification and resubmission under one of the available options set forth above. CLECs that have already signed a Commercial Agreement may continue to request new service pursuant to their Commercial Agreement." (See Attached **Exhibit 1**). A mere one week after the issuance of the *TRRO*, BellSouth declared their intent to take unilateral action against not only SouthEast, but every other CLEC within their operating region, in direct violation of the change of law provisions contained within many of those CLECs' Agreements with the conglomerate.

The *TRRO* does not purport to abrogate the change of law provisions of carrier's interconnection agreements. To the contrary, the *TRRO* directs carriers to implement rulings by negotiating changes to their interconnection agreements:

> We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. We note that the failure of an incumbent LEC or a competitive LEC to negotiate in good faith under section 251(c)(1) of the Act and our implementing rules may subject that party to enforcement action. Thus, the incumbent LEC must negotiate in good faith regarding any rates, terms, and conditions, necessary to implement our rule changes. We

> expect that parties to the negotiating process will not unreasonably delay implementation of the conclusions adopted in this Order. We encourage the state commissions to monitor this area closely to ensure that parties do not engage in unnecessary delay.

(*TRRO* § 233, footnotes omitted.)

Following the intent of the *TRRO*, SouthEast began negotiations for a commercial agreement with BellSouth on February 14, 2005. SouthEast entered the negotiations with two (2) misconceptions: (1) that both parties would be negotiating in good faith and (2) that it would be bilateral negotiations with concessions being made by both parties in order to reach a mutually acceptable Agreement workable for both.

SouthEast offered a good-faith proposal that was both forthcoming and generous. The initial response from the BellSouth Contract Negotiator was that "while they appreciated the effort" they must decline the offer and instead here was the standard BellSouth commercial agreement for SouthEast's review. Not satisfied with the standard dismissal, SouthEast sought more "direct" negotiations with BellSouth Vice President Jerry Hendrix. In the negotiations with Mr. Hendrix, SouthEast modified its generous proposal to reflect concessions called for by BellSouth. BellSouth, in the guise of "good faith" negotiations, offered to take the SouthEast proposal and make revisions that BellSouth would be willing to consider as a counter-proposal. When the so called "counter-proposal" was returned to SouthEast via e-mail, SouthEast was extremely disappointed in that the company could not accept the terms which were inconsistent with BellSouth's obligation to offer the local switching and shared transport unbundled network elements at "just and reasonable" rates, terms, and conditions, pursuant to Sections 201, 202, and 271 of the 1996 Act, and inconsistent with BellSouth's obligations under the antitrust laws.

Carrier Notification SN91055061 was released by BellSouth on March 7, 2005, extending the "implementation date" of the prior Carrier Notification from March 11, 2005, until the earlier of (1) an order from an appropriate body, either a commission or a court, allowing BellSouth to reject these orders; or (2) April 17, 2005. Here again, BellSouth is engaging in unilateral, self-effectuating rulemaking ignoring the burdensome, time consuming change of law processes contained within the interconnection agreements the company has with CLECs throughout their operating region.

BELLSOUTH MUST PROVIDE UNE-P PURSUANT TO § 271 OF THE 1996 ACT

Irrespective of the *TRRO*, SouthEast is still entitled to obtain UNE-P at "just and reasonable rates" from BellSouth. Section 271 of the 1996 Act independently supports SouthEast's right to do so. As the FCC affirmed in the *TRO*, so long as BellSouth wishes to continue to provide in-region interLATA services under Section 271 of the 1996 Act, it "must continue to comply with any conditions required for [§271] approval" (*TRO* § 665), and that is whether or not a particular network element must be made available under Section 251. One of the central requirements of Section 271 is that a Bell Operating Company must enter into "binding agreements that have been approved under Section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities." (1996 Act § 271(c)(1)(A)) Those agreements must provide access to facilities that meet the requirements of the so called Section 271 checklist (*Id.* § 271(c)(2)(A)(ii).) That checklist requires that the agreement must provide local switching. (*Id.* § 271(c)(2)(B)(vi).) To satisfy the requirements of the checklist, the interconnection agreement must provide switching at a rate deemed just and reasonable. (*Id. TRO.* ¶¶ 662-664.).

THE COMMISSION MUST ACT TO PROTECT COMPETITION & CONSUMERS

BellSouth's unilateral decision to cease providing local circuit switching on April 17, 2005, poses a serious threat to local service competition within the Commonwealth and most importantly to Kentucky telecommunications consumers. BellSouth's overly-broad interpretation of the *TRRO*'s definition of "new adds" could potentially force many consumers to leave their current provider when doing something as simple as changing features on their existing phones lines.

SouthEast believes that BellSouth's refusal to accept new orders after April 17, 2005, will prevent SouthEast from obtaining new customers, and BellSouth's refusal to accept adds, moves, and changes for orders submitted on behalf of SouthEast's existing, embedded customer base will result in inadequate service for those existing customers. For example, if a SouthEast customer requests "call forward always" to his vacation home on April 1, 2005, then asks SouthEast on April 18, 2005 to remove the call forwarding so that call revert to their usual location, SouthEast will be unable to remove the call forwarding feature from the customer's account because of BellSouth's rejection of SouthEast's change request. Likewise, a growing business customer that is expanding its workforce or relocating will not be able to add lines or move its service. Under all these scenarios, the only solution for the customer is to terminate their service with SouthEast and request service with BellSouth. This is the epitome of anticompetitive behavior - not an intended consequence of the *TRRO*, and should not be endorsed by this Commission.

BellSouth's refusal to participate in meaningful bilateral "good-faith" negotiations as anticipated by the FCC in the *TRRO* could ultimately lead to a return to the monopolistic days of old when there was only one (1) local service provider in the rural areas of Kentucky. SouthEast's past experience with BellSouth has evidenced the fact that BellSouth has no intent to negotiate towards mutually acceptable arrangements to allow SouthEast and other CLECs to continue adding customers for the combination of unbundled voice grade loop, local switching, and shared transport network elements formerly known as UNE-P.

It is imperative that the Commission require BellSouth to follow the change of law and dispute resolutions provisions set forth in the individual interconnection agreements with the CLECs such as SouthEast. Allowing BellSouth's April 17, 2005, self-imposed deadline to stand would be ushering in a new era of higher prices and fewer competitive choices for the rural consumers of Kentucky.

CONCLUSION

WHEREFORE, to avoid irreparable harm to SouthEast, the CLEC industry within Kentucky, and telecommunications consumers throughout the Commonwealth, SouthEast Telephone respectfully requests that the Commission:

(1) Order BellSouth to continue accepting and processing SouthEast's UNE-P orders, including new orders, adds, moves, and changes to SouthEast's existing embedded customer base, under the rates, terms and conditions of the Agreement;

(2) Order BellSouth to continue accepting and processing SouthEast's high cap loop, high cap transport, and EEL orders under the rates, terms and conditions of the Agreement;

(3) Order BellSouth to comply with the change of law provision of the Agreement with regard to the implementation of the *TRRO*;

(4) Order BellSouth to comply with the competitive checklist in Section 271 of the federal Telecommunications Act of 1996 ("the Act") and continue to provide the former UNEs at "just and reasonable" rates.

(5) Order such further relief as the Commission deems just and appropriate.

Dated the _____ day of March, 2005.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the electronic version of this filing made with the Commission this the 16th day of March, 2005, is a true and accurate copy of the documents filed herewith in paper form, and the electronic version of the filing has been transmitted via e-mail to the parties set forth in the Commission's service list.

JONATHON N. AMLUNG